

EARL D. LOVICK (VOL. 1)**CondenseIt!™****HURLBERT VS. W.R. GRACE**

Page 97

Page 99

11:31:24 1 that other?

11:31:24 2 MR. HEBERLING: Do you?

11:31:26 3 MR. GRAHAM: I don't know, and I

11:31:28 4 don't know whether it was actually attached, but it

11:31:32 5 refers to it, and I was just curious as to whether

11:31:32 6 you had it.

11:31:36 7 Thank you. Sorry for the interruption.

11:31:36 8 BY MR. HEBERLING:

11:31:50 9 Q Would you please refer to Exhibit 22? Did

11:31:56 10 you receive this discharge summary for Glenn Taylor,

11:32:02 11 admission date, February 11, 1959 -- And the

11:32:08 12 admission summary is written by Dr. G.W. Setser.

11:32:10 13 Did you receive that in 1959?

11:32:16 14 A We received this discharge summary. I

11:32:20 15 really don't recall exactly when, whether it was

11:32:24 16 right after his discharge or not, but, yes, we did

11:32:26 17 receive it.

11:32:30 18 Q And did you receive it sometime -- Is it

11:32:32 19 likely that you received it sometime during the year

11:32:34 20 of 1959?

11:32:36 21 A Yes, it is.

11:32:40 22 Q Okay. It says here that Mr. Taylor worked

11:32:42 23 at Zonolite for eighteen years. Did you know him?

11:32:42 24 A Yes, sir.

11:32:50 25 Q As of 1959, did you observe any shortness

11:34:04 1 State Tuberculosis Sanitarium to you dated March 10,

11:34:06 2 1959?

11:34:10 3 A This letter was not to me. This letter

11:34:10 4 was from me.

11:34:14 5 Q Are you looking at Exhibit 23?

11:34:18 6 A I'm sorry. I was looking at Exhibit 24.

11:34:18 7 Excuse me.

11:34:24 8 Q Okay.

11:34:26 9 A Yes, sir. This is a letter to me from

11:34:28 10 Dr. Knight. I'm sorry.

11:34:30 11 Q Did you receive that at or about its date

11:34:32 12 in 1959?

11:34:32 13 A Yes, sir.

11:34:38 14 Q Did you discuss this case with Dr. Knight

11:34:38 15 over the phone?

11:34:42 16 A I don't recall.

11:34:50 17 Q Do you know why he was inquiring about

11:34:54 18 asbestos?

11:34:56 19 MR. MURPHY: You mean beyond what's

11:34:58 20 stated in his letter?

11:35:00 21 MR. HEBERLING: Right. Generally.

11:35:02 22 MR. MURPHY: The letter states what

11:35:04 23 he's doing.

11:35:04 24 BY MR. HEBERLING:

11:35:06 25 Q Generally, did you know why he was

Page 98

Page 100

11:32:50 1 of breath in Mr. Taylor?

11:32:52 2 A Yes, sir.

11:32:56 3 Q In your estimation was it severe?

11:32:58 4 MR. GRAHAM: I would object on the

11:33:00 5 basis of foundation and speculation.

11:33:02 6 Go ahead and answer, if you can.

11:33:06 7 THE WITNESS: Well, I don't recall

11:33:08 8 exactly, but as I recall, yes, I would think it

11:33:10 9 would have to be classified as severe.

11:33:12 10 BY MR. HEBERLING:

11:33:12 11 Q What did you see?

11:33:14 12 A Just his general actions and his general

11:33:20 13 movements. It was obvious that he had breathing

11:33:20 14 difficulties.

11:33:28 15 Q Then, on the second page, right in the

11:33:32 16 middle, it says "Final Diagnosis on Discharge". Do

11:33:40 17 you see, "1. Histoplasmosis" and, "2. Asbestosis"?

11:33:40 18 A Yes, sir.

11:33:42 19 Q Do you know what became of Glenn Taylor?

11:33:42 20 A Yes, sir. He died.

11:33:46 21 Q Do you know how long after this 1959

11:33:46 22 report he died?

11:33:48 23 A No, sir, I don't know. I don't recall.

11:33:54 24 Q Let's go to Exhibit No. 23. Does this

11:33:58 25 appear to be a letter of Dr. Knight at the Montana

11:35:08 1 inquiring about asbestos?

11:35:12 2 A No, sir. I couldn't speculate on why he

11:35:16 3 was inquiring, other than what it states in this

11:35:16 4 letter.

11:35:18 5 Q So you don't have any information beyond

11:35:18 6 what's in the letter --

11:35:20 7 A No, sir.

11:35:26 8 Q -- at this time? Let's go to -- Now, I

11:35:28 9 believe attached to the first page of Exhibit 23 is

11:35:36 10 a letter under your signature, April 1, 1959. Do

11:35:36 11 you see that?

11:35:36 12 A Yes, sir.

11:35:38 13 Q Were you the author of that letter?

11:35:38 14 A Yes, sir.

11:35:44 15 Q And also attached are two handwritten

11:35:46 16 pages. Do you see those?

11:35:46 17 A Yes, sir.

11:35:50 18 Q And whose handwriting is that?

11:35:54 19 A Butch Bleich's, Mr. R.A. Bleich.

11:35:56 20 Q And he was your supervisor? He was the

11:35:56 21 plant manager?

11:35:58 22 A Yes, sir.

11:36:00 23 MR. GRAHAM: Excuse me. I'm

11:36:02 24 confused. Were you referring to 23 or 24?

11:36:06 25 THE WITNESS: 24.

Page 101

11:36:04 1 MR. HEBERLING: I have 23.
 11:36:10 2 MR. GRAHAM: See. I think there's
 11:36:12 3 confusion, because the letter from Lovick is, in our
 11:36:14 4 set, marked as 24.
 11:36:16 5 MR. HEBERLING: Okay. You probably
 11:36:18 6 also have it attached as 23. There were two
 11:36:22 7 different copies. Do you have it attached to 23?
 11:36:24 8 MR. MURPHY: No.
 11:36:24 9 MR. GRAHAM: No.
 11:36:28 10 MR. MURPHY: 23 stands alone as
 11:36:34 11 Knight to Lovick and is so marked one page, both
 11:36:36 12 with your tab and with the Plaintiff's exhibit stamp
 11:36:42 13 in the lower left corner. 24 is Lovick to Knight of
 11:36:46 14 April 1, 1959, so marked with your tab and
 11:36:50 15 Plaintiff's exhibit number in the lower left corner,
 11:36:56 16 plus the two handwritten pages that you've just
 11:36:58 17 begun to ask him about.
 11:36:58 18 MR. GRAHAM: Plus another --
 11:37:02 19 MR. MURPHY: Plus, in our book, two
 11:37:06 20 more letters, so that Exhibit 24 in this book has a
 11:37:14 21 total of five pages.
 11:37:14 22 BY MR. HEBERLING:
 11:37:18 23 Q And is that true with regard to your book
 11:37:22 24 as well? Is Exhibit 24 the April 1, 1959 letter?
 11:37:22 25 A Yes.

Page 102

11:37:24 1 Q And it has the two handwritten pages
 11:37:24 2 attached?
 11:37:26 3 A Yes. Yes.
 11:37:30 4 MR. GRAHAM: And his also has, again,
 11:37:34 5 the duplication of, then, 23 and then another copy
 11:37:42 6 of his letter of 24. Should we just pull those two
 11:37:42 7 off?
 11:37:44 8 MR. MURPHY: I was going to say, you
 11:37:46 9 may want to just pull them off or go off the record
 11:37:48 10 to clear this up, but the last two pages could just
 11:37:52 11 be removed because they're duplicates.
 11:37:52 12 MR. HEBERLING: Yes. Let's do that.
 11:37:52 13 THE VIDEOGRAPHER: Do you want to go
 11:37:54 14 off the record?
 11:37:56 15 MR. GRAHAM: No.
 11:37:58 16 MR. HEBERLING: We can edit it
 11:37:58 17 later.
 11:38:04 18 THE WITNESS: Here are the two copies
 11:38:06 19 which I've removed, if you'd like to --
 11:38:10 20 MR. HEBERLING: Okay. I'm sure we're
 11:38:12 21 making a lot of paper noises here.
 11:38:14 22 BY MR. HEBERLING:
 11:38:16 23 Q So Exhibit 24, does that appear to be a
 11:38:22 24 letter dated April 1, 1959 which you wrote?
 11:38:24 25 A Yes, sir.

Page 103

11:38:28 1 Q And then are there two handwritten pages
 11:38:30 2 attached to it?
 11:38:30 3 A Yes, sir.
 11:38:44 4 Q And is that the handwriting of Butch
 11:38:44 5 Bleich?
 11:38:44 6 A Yes, sir.
 11:38:48 7 Q And in the handwritten part, on page one
 11:38:50 8 of that, toward the bottom, do you see where
 11:38:56 9 Mr. Bleich quotes the 1956 State report which says,
 11:38:58 10 "However, the asbestos dust in the dust in the air
 11:39:02 11 is of considerable toxicity"? Do you see that?
 11:39:02 12 A Yes, sir.
 11:39:04 13 Q And, then, with regard to the studies
 11:39:10 14 being done by Dr. Knight, if any, did you ever ask
 11:39:10 15 for the results of the studies?
 11:39:12 16 A Not that I recall, no, sir.
 11:39:14 17 Q Do you have any further contact with
 11:39:20 18 Dr. Knight after this letter of April 1?
 11:39:20 19 A Not that I recall, no, sir.
 11:39:24 20 Q Then let's go to Exhibit 25. Does that
 11:39:40 21 appear to be a memo, Lovick to Kelley, dated
 11:39:40 22 April 17?
 11:39:42 23 A Yes, sir.
 11:39:44 24 Q Were you the author of that memo?
 11:39:44 25 A Yes, sir.

Page 104

11:39:56 1 Q Then Exhibit 26, does that appear to be a
 11:40:00 2 letter of Dr. Cairns, C-A-I-R-N-S, dated July 20,
 11:40:06 3 1959 to Mr. Bleich, manager of Zonolite?
 11:40:12 4 A Yes, sir.
 11:40:14 5 Q Did you receive this in Libby in 1959?
 11:40:16 6 A Yes, sir.
 11:40:18 7 Q Was that on or about its date that you
 11:40:18 8 received it?
 11:40:18 9 A Yes, sir.
 11:40:26 10 Q Was Dr. Cairns Glenn Taylor's doctor?
 11:40:30 11 A I don't know.
 11:40:38 12 Q There's a study of x-rays done on
 11:40:42 13 employees in 1959 which Dr. Cairns reports here. Do
 11:40:44 14 you see that?
 11:40:44 15 A Yes, sir.
 11:40:48 16 Q Was Dr. Cairns hired by the company to do
 11:40:48 17 this report?
 11:40:48 18 A No, sir.
 11:40:56 19 Q How was it that he did the report? Did he
 11:40:56 20 volunteer to do it?
 11:41:00 21 A He just did it, is all I can tell you. He
 11:41:02 22 was chief of staff of the medical staff of the
 11:41:08 23 hospital, and he was not asked to do this by the
 11:41:12 24 company. I think he just did it on his own.
 11:41:14 25 MR. GRAHAM: Excuse me, Counsel.

EARL D. LOVICK (VOL. 1)

CondenseIt!™

HURLBERT VS. W.R. GRACE

Page 105	Page 107
<p>11:41:20 1 With regard to Exhibit 26, is that a -- I don't know</p> <p>11:41:26 2 what the source for this report was, but is that a</p> <p>11:41:30 3 complete report to your knowledge?</p> <p>11:41:32 4 MR. HEBERLING: That was going to be</p> <p>11:41:34 5 one of my questions, as to whether there should be a</p> <p>11:41:36 6 signature page or something like that, it being a</p> <p>11:41:36 7 letter.</p> <p>11:41:38 8 MR. GRAHAM: Or whether the second</p> <p>11:41:40 9 page has any relation to the first page.</p> <p>11:41:42 10 MR. HEBERLING: That I think we can</p> <p>11:41:44 11 establish. It's the same numbers. There's 130</p> <p>11:41:52 12 people examined and 82 normal and 48 abnormal. That</p> <p>11:41:54 13 appears on the first and second pages.</p> <p>11:41:56 14 MR. MURPHY: Actually, there is one</p> <p>11:41:58 15 number different in the two. I mean, they obviously</p> <p>11:41:58 16 appear to be based on the same information, but if</p> <p>11:42:00 17 you look at the pneumoconiosis numbers, one is</p> <p>11:42:02 18 eight, and one is seven.</p> <p>11:42:04 19 MR. GRAHAM: The only point that I</p> <p>11:42:06 20 was trying to make is that these two pages are</p> <p>11:42:12 21 included as one -- part of the exhibit, and I don't</p> <p>11:42:14 22 know whether they're connected, but, anyway, maybe</p> <p>11:42:16 23 you can establish that.</p> <p>11:42:16 24 MR. HEBERLING: That's one of my</p> <p>11:42:20 25 questions to the witness, and I'll ask if counsel</p>	<p>11:44:02 1 the passage of this act, and we x-rayed all of our</p> <p>11:44:10 2 employees to establish a base, which could then be</p> <p>11:44:14 3 followed, so if there was any progression of the</p> <p>11:44:18 4 disease in our people -- And the only disease we</p> <p>11:44:26 5 could be responsible for was for silicosis, but the</p> <p>11:44:28 6 results of the interpretations of the x-rays showed</p> <p>11:44:32 7 that we had -- none of our employees had silicosis,</p> <p>11:44:36 8 but, nevertheless, we had a base established for</p> <p>11:44:40 9 their chest -- lung conditions at that time.</p> <p>11:44:42 10 Q Was it your understanding that under this</p> <p>11:44:46 11 '59 law for occupational disease the company was</p> <p>11:44:50 12 not responsible for conditions which preexisted the</p> <p>11:44:52 13 effective date of the law?</p> <p>11:44:54 14 A It was our understanding we were not</p> <p>11:44:58 15 responsible for conditions which existed at that</p> <p>11:45:02 16 time, which had been contracted previously to the</p> <p>11:45:04 17 passage of the law.</p> <p>11:45:06 18 Q Was this effort in part to protect the</p> <p>11:45:08 19 company against liability for preexisting</p> <p>11:45:08 20 conditions?</p> <p>11:45:14 21 MR. GRAHAM: Object to the form, and</p> <p>11:45:16 22 it requires speculation as well.</p> <p>11:45:18 23 THE WITNESS: Well, it would</p> <p>11:45:20 24 establish what their conditions were at that time,</p> <p>11:45:22 25 and in that sense, yes, it would be for the</p>
Page 106	Page 108
<p>11:42:24 1 has a third page. I've never seen one.</p> <p>11:42:26 2 MR. GRAHAM: I think that you're</p> <p>11:42:28 3 making a wrongful assumption in that the first page</p> <p>11:42:32 4 in here is marked page one and the second one is</p> <p>11:42:34 5 page two of the same document, and I don't believe</p> <p>11:42:42 6 that's the case, but I don't know.</p> <p>11:42:44 7 BY MR. HEBERLING:</p> <p>11:42:46 8 Q Okay. In the middle of the first page, it</p> <p>11:42:48 9 says "Number of Persons Examined - 130". Was that</p> <p>11:42:52 10 all of the workers at Zonolite in 1959?</p> <p>11:42:52 11 A Yes, sir.</p> <p>11:42:56 12 Q And what was the purpose of having chest</p> <p>11:42:58 13 x-rays for all 130 workers?</p> <p>11:43:04 14 A In 1959 the Montana legislature passed an</p> <p>11:43:08 15 industrial disease law, which became a part of the</p> <p>11:43:14 16 Workmen's Compensation law, and that industrial</p> <p>11:43:18 17 disease law took into account the responsibility of</p> <p>11:43:24 18 employers for various specified industrial diseases,</p> <p>11:43:30 19 which would become compensable, and one of the</p> <p>11:43:34 20 diseases which was specified in the law was</p> <p>11:43:38 21 silicosis, which we felt was the only industrial</p> <p>11:43:42 22 disease which would have any possibility of</p> <p>11:43:46 23 Zonolite, our operation, being responsible for.</p> <p>11:43:54 24 And the law specified that compensation</p> <p>11:43:58 25 would be based upon progression of the disease after</p>	<p>11:45:26 1 company's protection that they couldn't be</p> <p>11:45:28 2 responsible.</p> <p>11:45:30 3 BY MR. HEBERLING:</p> <p>11:45:32 4 Q Okay. In the middle of the first page, do</p> <p>11:45:36 5 you see 48 abnormal out of a total 130?</p> <p>11:45:38 6 A Yes, sir.</p> <p>11:45:38 7 Q So that would be a little over a third</p> <p>11:45:44 8 abnormals?</p> <p>11:45:44 9 A Yes, sir.</p> <p>11:45:48 10 Q Would the 130 include workers who had been</p> <p>11:45:50 11 there, say, less than a year?</p> <p>11:45:54 12 A Yes, sir. It included everyone who was on</p> <p>11:45:56 13 the payroll at that time.</p> <p>11:46:00 14 Q And do you see under the lettering, "a" to</p> <p>11:46:06 15 "I", "Pleural Thickenings - 8"? Do you see that?</p> <p>11:46:06 16 A Yes, sir.</p> <p>11:46:10 17 Q And are you aware that that could be the</p> <p>11:46:14 18 result of asbestos exposure?</p> <p>11:46:14 19 A Yes, sir, it could be.</p> <p>11:46:18 20 Q And do you see, also, "Defects of the</p> <p>11:46:24 21 Diaphragm" -- that's "b" -- three of those?</p> <p>11:46:24 22 A Yes, sir.</p> <p>11:46:26 23 Q You're aware that that could be a result</p> <p>11:46:30 24 of asbestos exposure as well?</p> <p>11:46:32 25 MR. GRAHAM: Objection. Vague and</p>

HURLBERT VS. W.R. GRAHAM

Page 109

11:46:32 1 ambiguous as to time.
 11:46:34 2 THE WITNESS: This just says
 11:46:36 3 "Defects". It could be for any reason.
 11:46:38 4 BY MR. HEBERLING:
 11:46:42 5 Q Okay. And do you see "c. Interstitial
 11:46:44 6 Fibrosis"?
 11:46:44 7 A Yes.
 11:46:44 8 Q 26?
 11:46:46 9 A Yes.
 11:46:46 10 Q Are you aware that that could be the
 11:46:50 11 result of asbestos exposure?
 11:46:50 12 MR. GRAHAM: Same objection.
 11:46:52 13 THE WITNESS: It could be, yes, but
 11:47:04 14 not necessarily.
 11:47:04 15 BY MR. HEBERLING:
 11:47:04 16 Q What's your understanding of interstitial
 11:47:04 17 fibrosis is?
 11:47:06 18 A It's a scarring of the lung tissues, to my
 11:47:06 19 understanding.
 11:47:08 20 Q Now, to your knowledge was there an
 11:47:08 21 additional page or two of this report with the
 11:47:10 22 doctor's signature on it?
 11:47:12 23 A I don't know.
 11:47:14 24 Q When you first saw this report, were you
 11:47:20 25 alarmed?

Page 110

11:47:22 1 MR. MURPHY: Objection to the form of
 11:47:24 2 the question.
 11:47:26 3 THE WITNESS: Well, that was forty
 11:47:32 4 years ago almost, and I don't remember what my
 11:47:34 5 reaction might have been.
 11:47:34 6 BY MR. HEBERLING:
 11:47:38 7 Q Did this appear to be an extraordinary
 11:47:42 8 number of abnormal chests?
 11:47:44 9 MR. MURPHY: Objection to the form of
 11:47:44 10 the question.
 11:47:46 11 THE WITNESS: There again, I don't
 11:47:50 12 know what one could expect, but I would say, yes, it
 11:47:54 13 would appear to be a large number of abnormal
 11:47:54 14 chests.
 11:47:56 15 BY MR. HEBERLING:
 11:47:58 16 Q Did you make any inquiries as to how many
 11:48:02 17 abnormal chests one could expect in a normal
 11:48:04 18 population?
 11:48:06 19 A Not specifically, no, sir. I don't know
 11:48:10 20 that we did.
 11:48:12 21 Q Did you determine which people were the 48
 11:48:14 22 abnormal chests?
 11:48:18 23 A We knew which ones they were because we
 11:48:22 24 had copies of the interpretations of the x-rays.
 11:48:24 25 Q And did you obtain those from the

Page

11:48:24 1 hospital?
 11:48:26 2 A Yes, sir.
 11:48:38 3 Q And as of 1959, did you feel that serious
 11:48:44 4 health problems had been identified?
 11:48:44 5 MR. MURPHY: Objection to the form of
 11:48:46 6 the question. Vague and ambiguous.
 11:48:50 7 THE WITNESS: I don't recall what we
 11:48:54 8 would have thought about that.
 11:48:54 9 BY MR. HEBERLING:
 11:48:56 10 Q Have you testified in the past that when
 11:49:00 11 you received this report you did feel that serious
 11:49:06 12 health problems had been identified?
 11:49:06 13 A I don't recall.
 11:49:30 14 Q I'm now showing you your deposition dated
 11:49:40 15 May 27, 1992, and do you see on page 52 a discuss
 11:49:46 16 of the July 20, 1959 report from Dr. Cairns?
 11:49:46 17 A Yes.
 11:49:54 18 Q And then do you see the question, And did
 11:49:56 19 these appear to be serious health problems that had
 11:50:00 20 been identified?
 11:50:02 21 And then did you give the answer, As a
 11:50:02 22 layman?
 11:50:04 23 Repeat of the question. As a layman, do
 11:50:06 24 you feel that these were serious health problems
 11:50:12 25 identified?

Page

11:50:12 1 Answer: Included in that abnormal list,
 11:50:12 2 yes, there would have been some that were serious
 11:50:14 3 health problems.
 11:50:18 4 Do you see that?
 11:50:18 5 A Yes, sir.
 11:50:18 6 Q And is that the testimony you gave at the
 11:50:18 7 time?
 11:50:24 8 A Yes, sir.
 11:50:28 9 Q So would you agree that Dr. Cairns
 11:50:30 10 essentially confirmed what the company already k
 11:50:34 11 based on the '56 report, but he brought it home to
 11:50:36 12 particular employees?
 11:50:36 13 MR. GRAHAM: I would object on the
 11:50:38 14 basis that it assumes that the health employees tha
 11:50:48 15 the witness has been talking about or -- the health
 11:50:50 16 problems are those related to asbestos.
 11:50:50 17 Go ahead and answer the question, if you
 11:50:50 18 can.
 11:50:52 19 THE WITNESS: Can I hear the question
 11:50:52 20 again, please?
 11:50:52 21 (The reporter then read back the
 11:50:52 22 preceding question.)
 11:51:02 23 MR. MURPHY: And I would also object
 11:51:08 24 on the grounds that it's vague and ambiguous.
 11:51:10 25 THE WITNESS: I don't think that I

EARL D. LOVICK (VOL. 1)

CondensellTM

HURLBERT VS. W.R. GRACE

Page 113

Page 115

11:51:14 1 I could say that he did confirm that. I don't really
 11:51:20 2 know what he confirmed, because this statistical
 11:51:24 3 review included all abnormal chests from whatever
 11:51:26 4 reason. For example, there's one in here that --
 11:51:32 5 Metallic object in the chest, that certainly is not
 11:51:34 6 something we would have been responsible for. Just
 11:51:36 7 like some of these other things. There's no way
 11:51:40 8 that they could have been caused by their employment
 11:51:46 9 with us.

11:51:50 10 BY MR. HEBERLING:

11:51:52 11 Q I am now showing you again your May 27,
 11:52:02 12 1992 deposition, and at page 242 do you see the
 11:52:04 13 question, So, really, would you agree with me that
 11:52:06 14 Dr. Cairns essentially confirmed what you already
 11:52:12 15 knew based upon the 1956 report but brought it home
 11:52:12 16 to your particular employees?

11:52:14 17 Answer: I think that would be a true
 11:52:16 18 statement. Yes.

11:52:16 19 Do you see that?

11:52:16 20 A Yes.

11:52:18 21 Q Did you give that testimony at that time?

11:52:24 22 A Yes, I did.

11:52:26 23 MR. GRAHAM: We should note for the
 11:52:28 24 record that the question at that time was objected
 11:52:30 25 to, and Counsel omitted to read the objections that

11:53:46 1 A Well, later on we changed the procedure so
 11:53:54 2 that everyone with an abnormal chest was notified by
 11:53:54 3 a company representative.

11:53:56 4 Q And when did you do that?

11:53:56 5 A I don't recall the date.

11:54:02 6 Q Was that late '70s, about?

11:54:06 7 A It would have been in the '70s, yes, sir.

11:54:08 8 Q And did you change the procedure because
 11:54:12 9 of problems that some employees were not being
 11:54:12 10 notified?

11:54:18 11 MR. MURPHY: Objection. Asked and
 11:54:18 12 answered.

11:54:18 13 THE WITNESS: I would not say that
 11:54:20 14 that was true. We changed the procedure so that
 11:55:10 15 that could not happen or would not happen.

11:55:12 16 BY MR. HEBERLING:

11:55:14 17 Q Okay. I'm now showing you a memo from
 11:55:22 18 yourself to -- And this is Exhibit 192. We'll get
 11:55:26 19 to it. From yourself to Mr. Eschenbach dated
 11:55:30 20 November 18, 1980. Was that a memo that you
 11:55:30 21 authored?

11:55:34 22 A I don't know what it says, but I probably
 11:55:38 23 did.

11:55:40 24 MR. MURPHY: Please look at before
 11:55:42 25 you assume that you did or you didn't, if you

Page 114

Page 116

11:52:32 1 were made, and we would make the same objections
 11:52:34 2 now.

11:52:34 3 BY MR. HEBERLING:

11:52:42 4 Q Did the company personally notify the 48
 11:52:44 5 workers with abnormal chests?

11:52:48 6 A The company did not directly notify them,
 11:52:50 7 but the employees with abnormal chests were
 11:52:52 8 notified.

11:52:56 9 Q And how were they notified?

11:52:56 10 A By their physicians.

11:53:00 11 Q Are you sure that every one of them was
 11:53:04 12 notified by his physician?

11:53:06 13 A No. I can't say that I'm sure of that,
 11:53:10 14 but that was the procedure, and the physicians had
 11:53:14 15 all agreed that they would contact the employees on
 11:53:16 16 their conditions.

11:53:20 17 Q And so, as far as copies of these x-ray
 11:53:24 18 reports went, was there one kept at the hospital,
 11:53:28 19 one at Zonolite and one to the family doctors?

11:53:28 20 A Yes, sir.

11:53:30 21 Q Is that how it went?

11:53:32 22 A Yes, sir. That is the way it was handled.

11:53:36 23 Q And later on did you find out that there
 11:53:42 24 were problems with this procedure of leaving it to
 11:53:44 25 the family doctor to notify the employee?

11:55:44 1 haven't seen it.

11:56:16 2 THE WITNESS: Yes, sir, I --

11:56:18 3 BY MR. HEBERLING:

11:56:20 4 Q Do you believe you were the author of that
 11:56:20 5 memo?

11:56:20 6 A Yes, sir.

11:56:28 7 Q I'll read you a portion from the last
 11:56:36 8 page. It says, "In all cases the employees'
 11:56:38 9 physician is given a copy of the radiologist's
 11:56:42 10 review and is to review it with his patient. We
 11:56:44 11 found this was not always being done, so beginning
 11:56:48 12 in 1975, we began notifying employees ourselves." Do
 11:56:48 13 you see that?

11:56:48 14 A Yes, sir.

11:56:52 15 Q And was that a correct statement of what
 11:56:52 16 happened?

11:56:52 17 A I'm sure it was.

11:57:06 18 MR. MURPHY: Let me object if the
 11:57:10 19 purpose of that was to suggest there was something
 11:57:14 20 inconsistent in Mr. Lovick's prior answer with
 11:57:16 21 respect to problems. Otherwise, it seems improper
 11:57:22 22 Cross-Examination to simply read him something and
 11:57:24 23 say, Is that what it says? The document speaks for
 11:57:30 24 itself. So I object to that last question belatedly
 11:57:34 25 on the grounds that it's improper impeachment.

Page 117	Page
<p>11:57:38 1 MR. HEBERLING: Okay. Counsel, the</p> <p>11:57:42 2 purpose is not to impeach. It's to get the full and</p> <p>11:57:44 3 complete testimony into the record and get it</p> <p>11:57:48 4 correct. So that's why I'm doing that, but I</p> <p>11:57:50 5 understand the objection.</p> <p>11:57:58 6 BY MR. HEBERLING:</p> <p>11:58:00 7 Q If the worker had an appointment to see</p> <p>11:58:04 8 the doctor, would he have to pay for the</p> <p>11:58:06 9 appointment?</p> <p>11:58:06 10 A No, sir.</p> <p>11:58:14 11 Q Was that arranged with the local</p> <p>11:58:16 12 physicians?</p> <p>11:58:16 13 A Yes, sir, it was.</p> <p>11:58:18 14 Q And so they were donating their time in</p> <p>11:58:20 15 that regard?</p> <p>11:58:20 16 A Yes, sir.</p> <p>11:58:26 17 Q Was the company's next set of x-rays on</p> <p>11:58:30 18 the employees 1964?</p> <p>11:58:30 19 A Yes, sir.</p> <p>11:58:34 20 Q And did the company continue to do annual</p> <p>11:58:36 21 chest x-rays all the way up to 1983 when you left?</p> <p>11:58:38 22 A Yes, sir.</p> <p>11:58:42 23 MR. HEBERLING: It's a little after</p> <p>11:58:44 24 twelve. We can stop there.</p> <p>11:58:46 25 THE VIDEOGRAPHER: We're going off</p>	<p>13:06:20 1 doctors to get their results.</p> <p>13:06:30 2 Q I'm now showing you your deposition taken</p> <p>13:06:42 3 December 20, 1983, page 209. Do you see the</p> <p>13:06:44 4 question, When, as I understand it, in the mid-'60s,</p> <p>13:06:48 5 if a person had significant x-ray changes, that</p> <p>13:06:50 6 person was not informed directly, but his regular</p> <p>13:06:52 7 physician was informed; is that correct?</p> <p>13:06:54 8 Answer: That's correct.</p> <p>13:06:56 9 And if the employee did not talk to his</p> <p>13:06:58 10 regular physician or his regular physician did not</p> <p>13:07:02 11 inform him, no one would have discouraged him from</p> <p>13:07:06 12 continued employment? Is that a fair statement?</p> <p>13:07:08 13 The answer, That would be correct, yes.</p> <p>13:07:10 14 Is that the answer you gave at the time?</p> <p>13:07:12 15 A That's the answer I gave at the time.</p> <p>13:07:14 16 MR. GRAHAM: Objection. Improper</p> <p>13:07:22 17 attempt at impeachment.</p> <p>13:07:22 18 BY MR. HEBERLING:</p> <p>13:07:26 19 Q Now back to Exhibit 26. Is that in front</p> <p>13:07:26 20 of you?</p> <p>13:07:26 21 A Yes.</p> <p>13:07:30 22 Q Do you see in the second sentence in the</p> <p>13:07:32 23 letter it states, "It is not accurate nor complete</p> <p>13:07:36 24 without a personal, physical differential diagnosis,</p> <p>13:07:38 25 which should be done on all cases showing any</p>
Page 118	Page
<p>11:58:48 1 the record. It's approximately 11:58.</p> <p>12:57:54 2 (Lunch recess.)</p> <p>13:04:54 3 THE VIDEOGRAPHER: We're back on the</p> <p>13:04:58 4 record. It's approximately 1:04.</p> <p>13:04:58 5 BY MR. HEBERLING:</p> <p>13:05:00 6 Q Before lunch we were discussing the</p> <p>13:05:04 7 procedure for the annual chest x-rays, and we</p> <p>13:05:14 8 discussed whether the workers were directly notified</p> <p>13:05:16 9 or not, and so in the '60s and the '70s, up to 1975,</p> <p>13:05:18 10 is it correct that if a worker had an abnormal x-ray</p> <p>13:05:22 11 the company would not directly notify the worker</p> <p>13:05:24 12 even though the company knew it?</p> <p>13:05:28 13 A Yes. It was the responsibility of the</p> <p>13:05:40 14 doctor to tell the employee if there was a problem,</p> <p>13:05:46 15 but if there was an x-ray that appeared to be quite</p> <p>13:05:50 16 damaging to the employee, we would notify the</p> <p>13:05:54 17 employee to be sure to see his doctor about it.</p> <p>13:05:56 18 Q Quite damaging?</p> <p>13:06:00 19 A Well, if it looked to be serious and he</p> <p>13:06:10 20 might need some further follow-up or something.</p> <p>13:06:16 21 Q When did you start doing that?</p> <p>13:06:16 22 A I think we always did that, but the</p> <p>13:06:18 23 procedure was for the doctor to see them, and we</p> <p>13:06:18 24 would always post notices that the employees</p> <p>13:06:20 25 should -- all employees should check with their</p>	<p>13:07:46 1 abnormal defects of the chest"? Do you see that?</p> <p>13:07:46 2 A Yes, sir.</p> <p>13:07:50 3 Q And in 1959 did the company do anything to</p> <p>13:07:52 4 ensure that workers with an abnormal chest had a</p> <p>13:07:54 5 full exam?</p> <p>13:07:58 6 A No, sir. I don't know that they would</p> <p>13:08:00 7 have done anything directly.</p> <p>13:08:02 8 Q To your knowledge did the company do</p> <p>13:08:08 9 anything to notify the 82 workers with normal chest</p> <p>13:08:10 10 that there was a pattern there indicating danger in</p> <p>13:08:10 11 the workplace?</p> <p>13:08:12 12 MR. MURPHY: Objection to the form of</p> <p>13:08:16 13 the question.</p> <p>13:08:18 14 THE WITNESS: No. I don't know that</p> <p>13:08:20 15 we did anything directly.</p> <p>13:08:20 16 BY MR. HEBERLING:</p> <p>13:08:22 17 Q What about the eight workers with possible</p> <p>13:08:30 18 asbestosis? Did the company do anything to move</p> <p>13:08:30 19 them to work in areas of less exposure?</p> <p>13:08:34 20 A No, sir, but it must be understood that we</p> <p>13:08:36 21 did not have the authority to do that. We were</p> <p>13:08:42 22 bound by union rules as to what we could do to move</p> <p>13:08:42 23 employees around.</p> <p>13:08:44 24 Q Did you raise the issue with the union?</p> <p>13:08:46 25 A Yes, we did, on occasions.</p>

EARL D. LOVICK (VOL. 1)

CondenseIt!™

HURLBERT VS. W.R. GRACE

Page 121

Page 123

13:08:48 1 Q In '59 did you?

13:08:50 2 A I don't know that we did in '59, no.

13:08:58 3 Q Did you or anyone receive a medical study

13:09:02 4 of the Libby -- Excuse me. Recommend a medical

13:09:06 5 study of the Libby employees to find out what the

13:09:06 6 risks were in 1959?

13:09:08 7 A No, sir. Not that I recall.

13:09:12 8 Q Did you disclose this report of

13:09:18 9 Dr. Cairns, Exhibit 26, to Ben Wake of the Board of

10 Health?

13:09:18 11 A I don't recall.

13:09:26 12 Q Do you recall receiving any directive from

13:09:32 13 company headquarters in Chicago to do anything as a

13:09:32 14 result of this report?

13:09:42 15 A No, sir, I don't recall that we did.

13:09:44 16 Q In your mind back in '59, did this

13:09:46 17 underscore the need to take better care of the dust

13:09:48 18 problem?

13:09:52 19 MR. GRAHAM: Object to the form.

13:09:54 20 Go ahead and answer.

13:09:56 21 It's vague and ambiguous.

13:09:56 22 THE WITNESS: I don't really know

13:10:00 23 what the question means, but it would certainly

13:10:06 24 reinforce what we have always felt, that we should

13:10:10 25 do what we can to alleviate the dust problem that we

Page 122

Page 124

13:10:10 1 had.

13:10:12 2 BY MR. HEBERLING:

13:10:18 3 Q Let's go to Exhibit 27. Does this appear

13:10:24 4 to be a letter by you to Mr. Foot of Detroit

13:10:26 5 Insurance Agency in Michigan dated September 2,

13:10:28 6 1959?

13:10:32 7 A Yes, it is. However, it's not Foot. It's

13:10:40 8 Toot. It's T-O-O-T.

13:10:42 9 Q Okay. Are you the author of this letter?

13:10:42 10 A Yes, sir.

13:10:44 11 Q It states in the second paragraph,

13:10:46 12 "Dr. Little ... reviewed the x-rays of all our

13:10:50 13 employees. He sorted out those which showed any

13:10:54 14 evidence or where there was ... suspicion of ...

13:10:56 15 condition which possibly could be classified as an

13:10:58 16 industrial disease." Do you see that?

13:10:58 17 A Yes, sir.

13:11:04 18 Q And then the third paragraph, "We also

13:11:08 19 filed with the board our election to come under the

13:11:12 20 Occupational Disease Act with Royal Indemnity

13:11:14 21 Company as our insurance carrier." Do you see that?

13:11:14 22 A Yes, sir.

13:11:16 23 MR. GRAHAM: Object. Improper

13:11:16 24 examination.

13:11:18 25 ////

1 BY MR. HEBERLING:

13:11:20 2 Q So was this for insurance against

13:11:26 3 occupational disease claims?

13:11:28 4 A Yes, sir.

13:11:32 5 Q And was it your understanding that a

13:11:38 6 occupational disease claim would only appear if

13:11:44 7 there was liability if it was caused for a condition

13:11:46 8 at work -- caused by a condition at work?

13:11:50 9 A Well, that's what the Occupational Disease

13:11:56 10 Act was is to cover employees whose condition

13:11:58 11 resulted from their employment.

13:12:02 12 Q And what was the purpose of purchasing

13:12:04 13 insurance?

13:12:06 14 MR. GRAHAM: I would object to the

13:12:10 15 question on the basis that it assumes that this

13:12:14 16 witness knows what the purpose was.

13:12:16 17 Go ahead and answer it, if you can.

13:12:18 18 THE WITNESS: For the same reason

13:12:22 19 that we had industrial accident insurance, so the

13:12:26 20 insurance company was involved in the compensation

13:12:28 21 and protection of those employees.

13:12:28 22 BY MR. HEBERLING:

13:12:32 23 Q And did you purchase insurance to protect

13:12:32 24 the company?

13:12:34 25 MR. GRAHAM: Same objection.

13:12:38 1 THE WITNESS: Well, I don't know what

13:12:42 2 you mean by "Protect the company". I don't know

13:12:46 3 what you mean. For the same reason that you have

13:12:52 4 insurance for anything, you're buying it, in a

13:12:52 5 sense, for protection.

13:12:56 6 BY MR. HEBERLING:

13:12:58 7 Q And did the company seek coverage for all

13:13:04 8 occupational diseases, more than just silicosis?

13:13:12 9 A We sought coverage under the Occupational

13:13:14 10 Disease Act, which would cover any occupational

13:13:18 11 diseases which were defined in that act.

13:13:22 12 Q So anything the company was held liable

13:13:24 13 for the insurance would cover it? Is that fair?

13:13:24 14 A Yes, sir.

13:13:30 15 Q And in doing this were you doing all you

13:13:32 16 could to protect the company?

13:13:34 17 MR. MURPHY: Objection to the form of

13:13:34 18 the question.

13:13:36 19 THE WITNESS: Well, I don't know what

13:13:38 20 that question means, so I can't answer it.

13:13:40 21 BY MR. HEBERLING:

13:13:44 22 Q Well, was there anything that you could

13:13:46 23 have done to protect the company that you didn't do?

13:13:58 24 A Not that I know of, no, sir.

13:14:00 25 Q In the last paragraph it says, "In regard

HURLBERT VS. W.R. GRACE**CondenseIt!™****EARL D. LOVICK (VOI**

Page 125

Pag

13:14:00 1 to the list of diseases not covered by the act,
 13:14:02 2 which we would like to consider insuring as
 13:14:06 3 compensable, you will hear from Walter on this."
 13:14:06 4 Who was Walter at that time?
 13:14:10 5 A Walter Bein, who was vice-president of
 13:14:12 6 Zonolite Company.
 13:14:12 7 Q And was he in Chicago?
 13:14:12 8 A Yes, sir.
 13:14:16 9 Q Let's refer to Exhibit 28. Does this
 13:14:20 10 appear to be a memo from you to Mr. Bein dated
 13:14:22 11 September 2, 1959?
 13:14:22 12 A Yes, sir.
 13:14:24 13 Q And are you the author of this memo?
 13:14:24 14 A Yes, sir.
 13:14:26 15 Q Okay. In paragraph two it states, "No
 13:14:40 16 people are hired until they have received a physical
 13:14:44 17 examination, including (a) chest x-ray." Do you see
 13:14:44 18 that?
 13:14:48 19 A Yes, sir.
 13:14:50 20 Q Was that a new policy as of '59?
 13:14:58 21 A To the best of my recollection, that would
 13:15:04 22 have been instituted in 1959. Yes, sir.
 13:15:06 23 Q And why would the company not want people
 13:15:08 24 with chest problems?
 13:15:10 25 A Well, for the same reason that you don't

13:14:38 1 A Yes.
 13:16:38 2 Q -- generally?
 13:16:38 3 A Yes, sir.
 13:16:42 4 Q Did you feel a moral obligation to notify
 13:17:00 5 the workers that asbestos dust is toxic?
 13:17:02 6 A Well, we certainly felt that we had a
 13:17:08 7 moral obligation to make as safe a working
 13:17:10 8 environment as it was possible.
 13:17:12 9 Q Did you feel a moral obligation to notify
 13:17:16 10 the workers that there was a serious health hazard
 13:17:26 11 at the workplace?
 13:17:26 12 MR. MURPHY: Objection as to the
 13:17:26 13 form.
 13:17:28 14 MR. HEBERLING: I'm going to object
 13:17:28 15 to having two attorneys making objections.
 13:17:28 16 Normally, we have one.
 13:17:28 17 BY MR. HEBERLING:
 13:17:32 18 Q Go ahead.
 13:17:40 19 A Well, I would say that, yes, we would have
 13:17:42 20 an obligation.
 13:17:50 21 Q Then Dr. Little apparently stated that it
 13:17:56 22 was not proved what the situation was. What was
 13:18:00 23 your understanding as to what kind of proof might
 13:18:02 24 required to prove the situation?
 13:18:04 25 MR. MURPHY: Objection as to the

Page 126

Pag

13:15:12 1 want people with any other diseases which could be
 13:15:14 2 aggravated by their employment.
 13:15:20 3 Q So was that also to protect the company,
 13:15:20 4 that policy?
 13:15:22 5 A Yes.
 13:15:44 6 Q Let's refer to Exhibit 29. Does that
 13:15:48 7 appear to be a memo from you to Mr. Bein also dated
 13:15:50 8 September 2, 1959?
 13:15:52 9 A Yes, sir.
 13:15:54 10 Q Are you the author of this one as well?
 13:15:54 11 A Yes, sir.
 13:15:58 12 Q In the middle paragraph you're discussing
 13:16:02 13 a conversation with Dr. Little. Do you see that?
 13:16:02 14 A Yes, sir.
 13:16:04 15 Q It says, "In our conversation we discussed
 13:16:08 16 moral obligation to employees, the practical
 13:16:12 17 aspects, i.e., cost of such insurance, et cetera.
 13:16:14 18 It was his feeling that at this time he would not
 13:16:18 19 recommend our asking to be insured for asbestosis or
 13:16:20 20 other occupational disease. He stated that,
 13:16:24 21 actually, (we had not yet) proved that any of our
 13:16:26 22 people are so afflicted." Do you see that?
 13:16:26 23 A Yes, sir.
 13:16:32 24 Q Did you feel a moral obligation to the
 13:16:38 25 employees --

13:18:08 1 form. Vague and ambiguous.
 13:18:08 2 THE WITNESS: I don't know. This
 13:18:12 3 would be a judgment thing on the part of a physici
 13:18:18 4 that they would be convinced that that is what
 13:18:24 5 caused the particular condition.
 13:18:26 6 BY MR. HEBERLING:
 13:18:30 7 Q In 1959 was there any pulmonologist in
 13:18:30 8 Libby?
 13:18:32 9 A No, sir.
 13:18:34 10 Q Is it your understanding that a
 13:18:36 11 pulmonologist is a lung specialist?
 13:18:38 12 A Yes, sir.
 13:18:42 13 Q To your knowledge did the company consul
 13:18:48 14 with a lung specialist in 1959 on how to proceed?
 13:18:52 15 A Not that I recall, no, sir.
 13:18:54 16 Q To your knowledge did the company ever d
 13:18:54 17 so?
 13:19:02 18 A I don't know. Not to my knowledge. I
 13:19:02 19 really don't know.
 13:19:06 20 Q Were you aware that Dr. Little was a
 13:19:06 21 radiologist?
 13:19:08 22 A Yes, sir.
 13:19:10 23 Q And that he was not a lung specialist?
 13:19:12 24 A Yes, sir.
 13:19:24 25 Q Here, in the fourth paragraph down, with

EARL D. LOVICK (VOL. 1)

CondenseIt!™

HURLBERT VS. W.R. GRACE

Page 129

Page 131

13:19:26 1 regard to Glenn Taylor, you write, "Their final
 13:19:30 2 diagnosis was questionable asbestosis in his case."
 13:19:30 3 Do you see that?
 13:19:30 4 A Yes, sir.
 13:19:34 5 Q Do you recall we reviewed the report from
 13:19:34 6 the doctor?
 13:19:36 7 A Yes, sir.
 13:19:38 8 Q And it was not questionable asbestosis but
 13:19:40 9 just plain asbestosis?
 10 A No, sir.
 13:19:44 11 MR. GRAHAM: I'd object to that as a
 13:19:46 12 misstatement of the discharge certificate, and if
 13:19:48 13 you want to refer back to it and refer to the
 13:19:52 14 recommendations, it says, "Patient should return for
 13:19:58 15 a lung biopsy, which he did not prefer to have done
 13:20:02 16 at this time, to determine definitely the diagnosis
 13:20:04 17 of asbestosis."
 13:20:06 18 THE WITNESS: And --
 13:20:06 19 BY MR. HEBERLING:
 13:20:08 20 Q So here in Exhibit 29 you quoted
 13:20:12 21 "Questionable asbestosis," did you not?
 13:20:16 22 A I quoted whatever that report says. What
 13:20:18 23 number is it?
 13:20:28 24 Q It's Exhibit 22. Do you see on the first
 13:20:32 25 page in the middle "Admission Diagnosis:

Page 130

13:20:34 1 Questionable asbestosis?"
 13:20:34 2 A Yes, sir.
 13:20:38 3 Q And then do you see on the second page in
 13:20:40 4 the middle "Final Diagnosis on Discharge:
 13:20:42 5 Asbestosis?"
 13:20:46 6 A It states that -- It does state that, but
 13:20:52 7 the first page says, Questionable diagnosis (sic),
 13:20:56 8 and then the second page, on the last sentence, it
 13:21:00 9 says, "(The) patient shall return for a lung biopsy,
 13:21:04 10 which he did not prefer to have done at this time,
 13:21:06 11 to determine definitely the diagnosis of
 13:21:06 12 asbestosis."
 13:21:10 13 Q So is it your position that in quoting
 13:21:14 14 "Questionable asbestosis" that wasn't an error?
 13:21:14 15 MR. MURPHY: Objection.
 13:21:16 16 Argumentative.
 13:21:16 17 BY MR. HEBERLING:
 13:21:16 18 Q Go ahead.
 13:21:20 19 A No, I don't think that was an error,
 13:21:20 20 because it's quoted right from the report.
 13:21:22 21 Q And then in the fifth paragraph down, do
 13:21:24 22 you see where it says, Dr. Little "also stated,
 13:21:28 23 though, that we have a greater moral obligation to
 13:22:00 24 remove the hazard if one exists. This, I believe,
 13:22:02 25 we all agree with." Do you see that?

13:22:04 1 A Yes, sir.
 13:22:04 2 Q And was that true even if it meant
 13:22:10 3 spending more money to alleviate the situation?
 13:22:12 4 MR. MURPHY: Objection to the form.
 13:22:14 5 Vague and ambiguous.
 13:22:16 6 THE WITNESS: There's no conditions
 13:22:18 7 stated in this statement.
 13:22:18 8 BY MR. HEBERLING:
 13:22:22 9 Q So if it meant spending more money on
 13:22:24 10 maintenance crews, the company would do that?
 13:22:24 11 A Yes, sir.
 13:22:28 12 Q Then in the last paragraph, there's a
 13:22:42 13 discussion of when follow-up exams should take
 13:22:46 14 place. The last sentence, do you see it says, "He
 13:22:50 15 was not too definite in a suggestion for a
 13:22:50 16 follow-up. Perhaps a blanket in two years"? Do you
 13:22:50 17 see that?
 13:23:00 18 A Yes, sir.
 13:23:02 19 Q Did you seek other advice on how soon the
 13:23:02 20 follow-up exam should be?
 13:23:08 21 A We pretty much relied on Dr. Little's
 13:23:14 22 suggestion, because he was a pulmonologist with -- a
 13:23:22 23 radiologist with experience in industrial diseases,
 13:23:26 24 and we may have gotten some opinions from other
 13:23:30 25 doctors locally, but, primarily, we were relying on

Page 132

13:23:32 1 Dr. Little.
 13:23:34 2 Q Dr. Little is talking about a follow-up in
 13:23:48 3 one or two years. Did the company do that?
 13:23:48 4 A He says, Perhaps in two years. No, we did
 13:23:48 5 not do it.
 13:23:50 6 Q In fact, the company did not do that for
 13:23:50 7 five years; correct?
 13:23:56 8 A That's correct.
 13:24:12 9 Q Let's refer to Exhibit 30. Does that
 13:24:16 10 appear to be a letter signed by you to fellow
 13:24:20 11 employees dated September 9, 1959?
 13:24:20 12 A Yes, sir.
 13:24:26 13 Q And does it attach a list of doctors and
 13:24:30 14 various employees who, apparently, had those
 13:24:30 15 doctors?
 13:24:32 16 A Yes, sir.
 13:24:34 17 Q Okay. Are you the author of this
 13:24:36 18 Exhibit 30?
 13:24:40 19 A Yes, sir.
 13:24:50 20 Q And let's refer to Exhibit 32. Does that
 13:24:54 21 appear to be a memo from Mr. Bleich to Mr. Kelley
 13:24:56 22 dated April 13, 1961?
 13:24:58 23 A Yes, sir.
 13:25:04 24 Q Did you see this memo in Libby in 1961?
 13:25:06 25 A I don't recall.

HURLBERT VS. W.R. GRACE

CondenseIt!™

EARL D. LOVICK (VOI

Page 133

Pa

13:25:10 1 Q Is it likely that this is a Zonolite
13:25:10 2 document?
13:25:12 3 A Yes, sir.
13:25:18 4 Q Then let's refer to Exhibit 33, and does
13:25:20 5 this appear to be a letter by you --
13:25:22 6 MR. MURPHY: Did you skip 31 on
13:25:24 7 purpose, or did you just miss it?
13:25:28 8 MR. HEBERLING: I skipped over it.
13:25:28 9 MR. MURPHY: Okay.
13:25:30 10 BY MR. HEBERLING:
13:25:32 11 Q Does Exhibit 33 appear to be a letter by
13:25:38 12 you to Mr. C.A. Pratt dated June 14, 1961?
13:25:44 13 A Yes, sir.
13:25:46 14 Q Are you the author of this letter?
13:25:48 15 A Yes, sir.
13:25:48 16 Q Who was Mr. Pratt?
13:25:54 17 A He was the vice-president of Western
13:25:56 18 Mineral Products Company in Minneapolis, who were
13:25:56 19 one of our customers.
13:26:00 20 Q And did they purchase vermiculite from
13:26:00 21 your company?
13:26:00 22 A Yes, sir.
13:26:06 23 Q Did Zonolite own part of Western Mineral?
13:26:08 24 A They had a financial interest. Yes, they
13:26:08 25 owned a part of it.

13:27:34 1 THE WITNESS: I don't know.
13:27:34 2 BY MR. HEBERLING:
13:27:36 3 Q Did you recognize at the time that you
13:27:38 4 needed further information to draw conclusions?
13:27:40 5 A We couldn't draw any conclusions at that
13:27:42 6 time, so, obviously, we would have needed more
13:27:44 7 information.
13:27:48 8 Q What efforts were underway to gather more
13:27:50 9 information to draw conclusions from?
13:27:52 10 A Well, among other things, we talked with
13:27:58 11 the doctors collectively that were in Libby about
13:28:02 12 the situation of our employees and asked their
13:28:06 13 advice on what could be done or what information
13:28:18 14 could gather, and we went along with what we lea
13:28:26 15 from them, and their conclusion was -- is that the
13:28:30 16 could not say that we had a serious problem with
13:28:38 17 employees and employees' health.
13:28:40 18 Q Is that your understanding of what
13:28:40 19 information you got from the doctors?
13:28:40 20 A Yes, sir.
13:28:42 21 Q Do you have any document from the docto
13:28:44 22 that so states?
13:28:52 23 A Not that I recall, because this
13:28:56 24 information was given in meetings with them, and
13:29:02 25 think that there are documents which I have seen

Page 134

Pi

13:26:12 1 Q And then did Grace later acquire Western
13:26:14 2 Mineral?
13:26:14 3 A Yes, sir.
13:26:22 4 Q Had Mr. Pratt been making an inquiry with
13:26:24 5 concern for his own workers' health?
13:26:30 6 A I don't recall.
13:26:40 7 Q You're saying "In reply to your letter of
13:26:42 8 June 12".
13:26:44 9 A Excuse me. Yes. He would have made an
13:26:50 10 inquiry, which is why I would have written this
13:26:50 11 letter.
13:26:50 12 Q Have you seen the letter of June 12 any
13:26:52 13 time in the last ten years?
13:26:54 14 A Not that I recall.
13:27:04 15 Q Then in the first paragraph, you say, "I
13:27:08 16 am happy to outline our past experience (with)
13:27:10 17 regard to the effect of dust in our mill upon our
13:27:14 18 employees' health. This is a very complex and
13:27:16 19 confusing thing and one from which it is difficult
13:27:20 20 to draw any conclusions." Do you see that?
13:27:20 21 A Yes, sir.
13:27:22 22 Q What further information did you need at
13:27:26 23 the time to draw any conclusions?
13:27:28 24 MR. MURPHY: Objection to the form.
13:27:28 25 Lack of foundation.

13:29:08 1 that outline what was stated by the doctors a
13:29:10 2 of these meetings.
13:29:12 3 Q How recently have you seen these
13:29:12 4 documents?
13:29:16 5 A I don't know. In the last few years.
13:29:20 6 That's as close an estimate in time as I can g
13:29:20 7 you.
13:29:22 8 Q Do you know who the author of such a
13:29:24 9 document might be?
13:29:24 10 A Me.
13:29:26 11 Q So is this some document where you
13:29:30 12 summarized what was said at a meeting?
13:29:30 13 A Yes, sir.
13:29:32 14 Q Do you know when you did that?
13:29:36 15 A Well, it would have been about in this
13:29:38 16 period of time, when we were dealing with
13:29:44 17 problem.
13:29:46 18 MR. GRAHAM: It's right in this
13:29:58 19 letter.
13:30:00 20 BY MR. HEBERLING:
13:30:04 21 Q Okay. At the bottom of page one you
13:30:04 22 repeat the statement. You say at the very li
13:30:06 23 sentence, "However, the asbestos dust in the
13:30:10 24 the air is of considerable toxicity." Is that
13:30:12 25 repeating a statement from the 1956 report'

EARL D. LOVICK (VOL. 1)

CondenseIt!™

HURLBERT VS. W.R. GRACE

Page 137

Page 139

13:30:14 1 A It's quoted from that, yes.
 13:30:26 2 Q And then on page two you discuss -- Do you
 13:30:28 3 see where you discuss the Glenn Taylor case, and
 13:30:32 4 then about the middle of the page you repeat -- you
 13:30:36 5 state, "The final diagnosis of the man's case was,
 13:30:44 6 one, of histoplasmosis and, two, of questionable
 13:30:44 7 asbestosis"? Do you see that?
 13:30:44 8 A Yes.
 13:30:46 9 Q Now, is it fair to say that that's in
 13:30:50 10 error, that the final diagnosis was plain
 13:30:50 11 asbestosis, not questionable?
 13:30:54 12 MR. MURPHY: Objection. It's been
 13:30:56 13 asked and answered.
 13:30:58 14 THE WITNESS: I don't think this is a
 13:31:02 15 conflict, because while it's true it does say
 13:31:04 16 "Asbestosis" -- But there's a footnote there. It
 13:31:08 17 says he should return for a biopsy for that to be
 13:31:48 18 proven.
 13:31:48 19 BY MR. HEBERLING:
 13:31:54 20 Q Then on page three, second full paragraph,
 13:31:58 21 about two-thirds of the way down, do you see, "In
 13:32:02 22 the case of the employees where their x-rays
 13:32:06 23 interpretation showed some intrathoracic pathology,
 13:32:08 24 it was up to the doctors to determine whether
 13:32:10 25 further tests or examination or treatment should be

Page 138

Page 140

13:32:14 1 given. In the event that it was, this was to be at
 13:32:16 2 the employees' responsibility and expense"? Do you
 13:32:18 3 see that?
 13:32:18 4 MR. MURPHY: I'm sorry. Where are
 13:32:20 5 you, which paragraph?
 13:32:20 6 THE WITNESS: I don't --
 13:32:22 7 MR. HEBERLING: This is about
 13:32:24 8 two-thirds of the way down. There's a small
 13:32:24 9 paragraph.
 13:32:26 10 MR. MURPHY: I see that.
 13:32:26 11 THE WITNESS: Yes. I see that.
 13:32:28 12 BY MR. HEBERLING:
 13:32:28 13 Q Was that the company's position at the
 13:32:34 14 time?
 13:32:34 15 A Yes, sir. However, I would like to -- I
 13:32:40 16 would like to add, it states that, but we had
 13:32:44 17 employees' insurance for the employees, so that
 13:32:50 18 insurance, which the health insurance that the
 13:32:54 19 companies had, which was paid for by the company,
 13:33:04 20 would cover much of this expense.
 13:33:06 21 Q Okay. Then on page three you discuss a
 13:33:18 22 meeting with the doctors, and I'll read part of
 13:33:18 23 this.
 13:33:20 24 MR. GRAHAM: Which meeting, because
 13:33:22 25 there are two meetings discussed?

13:33:22 1 BY MR. HEBERLING:
 13:33:24 2 Q "After all of the results of these x-rays
 13:33:28 3 were in, we again met with the doctors and with the
 13:33:30 4 radiologist and discussed what our situation
 13:33:34 5 actually was in regard to pulmonary diseases from
 13:33:36 6 our plant. The preliminary results of the
 13:33:38 7 interpretations made it appear that we had a high
 13:33:42 8 incidence of pulmonary disease among our employees.
 13:33:46 9 However, after the doctors had analyzed the results,
 13:33:48 10 the conclusion they came to was there was nothing to
 13:33:50 11 indicate that there was a higher incidence of
 13:33:56 12 pulmonary trouble among our people than there was
 13:33:58 13 among any other group in the geographical area." Do
 13:33:58 14 you see that?
 13:33:58 15 A Yes, sir.
 13:34:04 16 Q So even though you had 48 out of 130
 13:34:04 17 abnormal -- Correct?
 13:34:06 18 A Yes, sir.
 13:34:08 19 Q Which is over a third abnormal?
 13:34:10 20 A Yes.
 13:34:12 21 Q Was it your understanding the doctors told
 13:34:14 22 you that this was not unusual?
 13:34:18 23 A It's not my understanding at all. That's
 13:34:24 24 fact. That's what they told us at the meeting.
 13:34:24 25 Q Is it possible you got it wrong?

13:34:24 1 A No, sir.
 13:34:26 2 Q You're 100 percent of sure of that?
 13:34:28 3 A Yes, sir.
 13:34:36 4 Q Did you ever find out that the normal
 13:34:42 5 percentage of abnormal chests in a population is
 13:34:44 6 five percent at most?
 13:34:48 7 A No, sir. I never found out any figures.
 13:34:54 8 Q In the group of doctors -- Which local
 13:34:56 9 doctors would that have been --
 13:34:58 10 A It would have been all of the doctors that
 13:35:00 11 were in the city of Libby at that time.
 13:35:02 12 Q So would that be Dr. Cairns, Dr. Nelson,
 13:35:06 13 Dr. Seifert, Dr. Matthews and Dr. Little, the
 13:35:06 14 radiologist?
 13:35:08 15 A Yes, sir.
 13:35:08 16 Q Any others?
 13:35:14 17 A Probably -- Probably or possibly
 13:35:16 18 Dr. MacKenzie.
 13:35:20 19 Q Were any of those doctors lung
 13:35:22 20 specialists?
 13:35:22 21 A No, sir.
 13:35:26 22 Q Do you recall any presentation of normal
 13:35:32 23 figures for the incidence of abnormal chests?
 13:35:32 24 A No, sir.
 13:35:48 25 Q Now, Dr. Cairns, in his report, had warned

HURLBERT VS. W.R. GRACE

Condensed

EARL D. LOVICK (VO)

Page 141	Page 142
<p>13:35:32 1 that an examination was necessary for a diagnosis of</p> <p>13:35:34 2 pulmonary disease; correct?</p> <p>13:35:34 3 MR. GRAHAM: What was the number of</p> <p>13:35:38 4 that exhibit so that we can refer to it and see</p> <p>13:35:38 5 exactly what he said?</p> <p>13:36:04 6 MR. MURPHY: And I object to the form</p> <p>13:36:08 7 of the question, "Warned," in particular.</p> <p>13:36:10 8 BY MR. HEBERLING:</p> <p>13:36:14 9 Q This is Exhibit 26. Would you refer back</p> <p>13:36:16 10 to that?</p> <p>13:36:20 11 MR. GRAHAM: Thank you, Jon.</p> <p>13:36:24 12 BY MR. HEBERLING:</p> <p>13:36:24 13 Q Have you found it?</p> <p>13:36:26 14 A Yes, sir.</p> <p>13:36:28 15 Q Do you see in the second sentence where</p> <p>13:36:32 16 he's talking about the survey, "It is not accurate</p> <p>13:36:32 17 nor complete without a personal, physical</p> <p>13:36:36 18 differential diagnosis, which should be done on all</p> <p>13:36:40 19 cases showing any abnormal defects of the chest"?</p> <p>13:36:42 20 A Yes, sir. It states that.</p> <p>13:36:46 21 Q So is it fair to say that he cautioned</p> <p>13:36:50 22 that a full exam was necessary for the diagnosis?</p> <p>13:36:52 23 MR. MURPHY: Objection to the form of</p> <p>13:36:54 24 the question. The document speaks for itself.</p> <p>13:36:56 25 THE WITNESS: He made this</p>	<p>13:38:04 1 incidence of pulmonary trouble among our people.</p> <p>13:38:08 2 there was among any other group in this geographic</p> <p>13:38:08 3 area."</p> <p>13:38:10 4 A This was a conclusion of the doctors, and</p> <p>13:38:12 5 it was based upon all the information that they had</p> <p>13:38:14 6 available to them.</p> <p>13:38:16 7 Q Do you know if they had full physical</p> <p>13:38:18 8 exams on these employees?</p> <p>13:38:20 9 A No. I don't know what they had at all.</p> <p>13:38:32 10 Q To your knowledge did the doctors produce</p> <p>13:38:36 11 anything written at this meeting where you receive</p> <p>13:38:36 12 this conclusion?</p> <p>13:38:38 13 A No, sir. I don't believe they did.</p> <p>13:38:40 14 Q Was this a lunch meeting?</p> <p>13:38:40 15 A Yes, sir.</p> <p>13:39:02 16 Q At this meeting was there any suggestion</p> <p>13:39:10 17 for a follow-up study?</p> <p>13:39:12 18 A I don't recall whether there was at that</p> <p>13:39:16 19 meeting or not, but we had -- We had other</p> <p>13:39:20 20 discussions with Dr. Little and the doctors as to</p> <p>13:39:24 21 what we should do about a follow-up study.</p> <p>13:39:24 22 Q What's your understanding about those</p> <p>13:39:26 23 discussions?</p> <p>13:39:30 24 A One was -- There was not an agreement, as</p> <p>13:39:36 25 I remember, when it should be given, but we start</p>
<p>13:37:00 1 statement. I guess you can interpret that as you</p> <p>13:37:00 2 wish.</p> <p>13:37:00 3 BY MR. HEBERLING:</p> <p>13:37:04 4 Q Now, by the time you met with the doctors,</p> <p>13:37:06 5 did you have results of physical examinations, or</p> <p>13:37:10 6 was it still just the chest x-rays?</p> <p>13:37:12 7 MR. GRAHAM: Vague and ambiguous as</p> <p>13:37:16 8 to who it is he's talking about. He or the doctors</p> <p>13:37:22 9 having the results of the tests, physical exams?</p> <p>13:37:22 10 BY MR. HEBERLING:</p> <p>13:37:24 11 Q Did you understand that I said, Did you</p> <p>13:37:24 12 have any results?</p> <p>13:37:28 13 A If these doctors -- If these employees had</p> <p>13:37:30 14 physical examinations, we would not have received</p> <p>13:37:46 15 copies of the results of those examinations.</p> <p>13:37:46 16 Q So does it appear, then, that this</p> <p>13:37:48 17 conclusion was drawn without physical examinations?</p> <p>13:37:48 18 A No.</p> <p>13:37:48 19 Q Was the conclusion based solely upon the</p> <p>13:37:48 20 x-ray results?</p> <p>13:37:50 21 A Now, which conclusion are you talking</p> <p>13:37:50 22 about?</p> <p>13:37:54 23 Q Page three of -- Back to Exhibit 33, which</p> <p>13:38:00 24 I read, "The conclusion they came to was there was</p> <p>13:38:02 25 nothing to indicate that there was a higher</p>	<p>13:39:40 1 in 1964 to have annual chest x-rays of all of</p> <p>13:39:40 2 employees.</p> <p>13:39:46 3 Q So that's three years after the -- No. It</p> <p>13:39:48 4 would be five years after the 1959 meeting?</p> <p>13:39:50 5 A Yes, sir.</p> <p>13:39:54 6 Q And at this meeting with the doctors, the</p> <p>13:39:56 7 lunch meeting, had anyone collected the medical</p> <p>13:40:00 8 literature on asbestosis?</p> <p>13:40:02 9 MR. MURPHY: Objection to the form</p> <p>13:40:02 10 the question.</p> <p>13:40:04 11 THE WITNESS: I don't recall. I</p> <p>13:40:04 12 don't know.</p> <p>13:40:10 13 BY MR. HEBERLING:</p> <p>13:40:12 14 Q To your knowledge were any of the doctors</p> <p>13:40:14 15 familiar with medical literature on asbestosis?</p> <p>13:40:18 16 A I have no idea what the doctors were</p> <p>13:40:18 17 familiar with.</p> <p>13:40:22 18 Q Except for Dr. Little, who is a</p> <p>13:40:24 19 radiologist, were all the others general</p> <p>13:40:26 20 practitioners?</p> <p>13:40:30 21 A Yes, sir. Well, they all had general</p> <p>13:40:32 22 practices. The only specialist was Dr. Nelson.</p> <p>13:40:36 23 was a surgeon.</p> <p>13:40:54 24 Q At the meeting was there a consensus</p> <p>13:40:56 25 what to do next?</p>

EARL D. LOVICK (VOL. 1)

CondenseIt!™

HURLBERT VS. W.R. GRACE

Page 145

Page 147

13-41:08 1 A Well, I don't -- I don't recall, but there
 13-41:14 2 were -- I don't recall that there was a consensus or
 13-41:16 3 any differing of opinions on it.
 13-41:22 4 Q To your knowledge, after this meeting in
 13-41:26 5 Libby, was there any effort by the company to
 13-41:28 6 consult with specialists in Chicago, where the
 13-41:30 7 company headquarters were?
 13-41:34 8 A I don't know. I'm not aware of any, but I
 9 don't know.
 13-41:42 10 Q Then at page four, second sentence at the
 13-41:46 11 top says, "There were people where some condition of
 13-41:56 12 fibrosis or pulmonary emphysema showed up who had
 13-41:56 13 been with us only a very short period of time." Do
 13-41:56 14 you see that?
 13-41:56 15 A Yes, sir.
 13-41:58 16 Q Did that cause you concern?
 13-42:00 17 A No. What this meant to us is that they
 13-42:04 18 came to us with these conditions, and it could not
 13-42:06 19 have been our responsibility for causing them.
 13-42:10 20 Q And that's how you interpreted that?
 13-42:10 21 A Yes, sir.
 13-42:12 22 Q Was that on the advice of any medical
 13-42:12 23 person?
 13-42:24 24 A Well, I don't recall that it was. I think
 13-42:28 25 it's a matter of common sense. These things don't

Page 146

Page 148

13-42:32 1 happen overnight. There's always a latency period
 13-42:34 2 of some length.
 13-42:50 3 Q Now, again, on page four of this
 13-42:56 4 Exhibit 33, in the middle of the page there's a
 13-43:06 5 large paragraph about -- Let's see. There's a
 13-43:08 6 paragraph on respirators, and here you say, "For
 13-43:12 7 quite a few years now, our employees at the dry
 13-43:14 8 mill, loading station and other points in the
 13-43:18 9 operation where dust exposure is high have been
 13-43:22 10 required to wear respirators." Were you aware as of
 13-43:26 11 1961 that there were difficulties wearing
 13-43:30 12 respirators in hot weather?
 13-43:30 13 A Yes, sir.
 13-43:34 14 Q Were you aware that it was difficult to
 13-43:38 15 communicate while wearing a respirator?
 13-43:38 16 A Yes, sir.
 13-43:42 17 Q Were you aware that the respirators had
 13-43:44 18 problems that they'd get plugged up with dust?
 13-43:44 19 A Yes, sir.
 13-43:52 20 Q Did you know Peter Kostic?
 13-43:54 21 A Yes, sir.
 13-43:56 22 Q And was he the safety supervisor for Grace
 13-43:58 23 beginning 1963 and thereafter?
 13-44:00 24 A Yes, sir.
 13-44:10 25 Q Okay. Let's refer to --

13-44:12 1 MR. MURPHY: You said earlier your
 13-44:16 2 interest was in making an accurate record. You just
 13-44:18 3 asked him, Was he the safety supervisor from a
 13-44:22 4 certain date thereafter? And there's been earlier
 13-44:24 5 testimony from Mr. Lovick at some point in time
 13-44:28 6 Mr. Eschenbach joined the company, and you asked him
 13-44:30 7 several questions as to what their respective
 13-44:42 8 responsibilities were once Eschenbach joined, the
 13-44:44 9 point being that earlier today he testified that
 13-44:48 10 Kostic was a safety engineer at some point in time
 13-44:50 11 and Eschenbach was his supervisor.
 13-44:50 12 MR. HEBERLING: I understand that.
 13-44:52 13 BY MR. HEBERLING:
 13-45:00 14 Q Let's refer to Exhibit 85.
 13-45:02 15 A 85?
 13-45:16 16 Q Yes. Now, at page five, just above the
 13-45:20 17 word "Summary," the last sentence, Mr. Kostic makes
 13-45:24 18 the statement, "Respirators are fine for short
 13-45:26 19 periods of time, but to get a man to wear one eight
 13-45:30 20 hours a day is next to impossible." Do you see
 13-45:30 21 that?
 13-45:32 22 A No, sir, I don't.
 13-45:34 23 Q Just above "Summary," at the bottom of the
 13-45:36 24 page, the sentence just above that.
 13-45:38 25 A Yes, sir, I see that.

13-45:44 1 Q Would you agree with Mr. Kostic on that
 13-45:44 2 statement?
 13-45:44 3 A Yes, sir.
 13-46:12 4 Q And let's refer to Exhibit 71. Who was
 13-46:16 5 Mr. Rupp, R-U-P-P?
 13-46:20 6 A He was the treasurer of the Zonolite
 13-46:22 7 division of W.R. Grace & Company.
 13-46:26 8 Q Okay. Mr. Rupp has made the statement,
 13-46:30 9 "Employees are often inclined to remove them,"
 13-46:32 10 meaning respirators, "when a supervisor is not
 13-46:36 11 present." Do you see that on the first page of
 13-46:38 12 Exhibit 71, toward the bottom?
 13-46:38 13 A Yes, sir.
 13-46:40 14 Q Do you agree with that?
 13-46:44 15 A Yes, sir.
 13-46:46 16 Q And did you know Walt Baker?
 13-46:46 17 A Yes, sir.
 13-46:48 18 Q Was he the mill superintendent?
 13-46:52 19 A He was the dry mill foreman, yes, sir.
 13-47:00 20 Q Was he ever superintendent, or was he --
 13-47:02 21 A No, he was never superintendent, but he
 13-47:04 22 was dry mill supervisor.
 13-47:04 23 Q Okay. So he was management?
 13-47:06 24 A Yes, sir.
 13-47:12 25 Q Were you aware that he rarely wore a

Page 149	Pa
<p>13:47:14 1 respirator?</p> <p>13:47:16 2 A No, sir, I'm not. I don't know that.</p> <p>13:47:22 3 Q Now, if we bring in a dozen witnesses who</p> <p>13:47:26 4 are ex-workers who will testify that most of the</p> <p>13:47:30 5 time the workers in the dry mill and elsewhere did</p> <p>13:47:34 6 not wear respirators in the '60s and '70s, would you</p> <p>13:47:36 7 dispute that?</p> <p>13:47:38 8 MR. GRAHAM: Objection to the form of</p> <p>13:47:38 9 the question.</p> <p>13:47:40 10 MR. MURPHY: Objection. Lack of</p> <p>13:47:42 11 foundation. Argumentative.</p> <p>13:47:44 12 THE WITNESS: It was previously</p> <p>13:47:52 13 stated that I spent maybe five percent of my time at</p> <p>13:47:56 14 the mining and milling operation. If you brought in</p> <p>13:47:58 15 the witnesses who worked in the mill and made a</p> <p>13:48:02 16 statement about what happened there, I would not be</p> <p>13:48:04 17 in a position to dispute that statement from</p> <p>13:48:06 18 personal observation.</p> <p>13:48:06 19 BY MR. HEBERLING:</p> <p>13:48:10 20 Q In the 1960s did you ever tell employees</p> <p>13:48:16 21 the reason for wearing respirators, mainly, that</p> <p>13:48:20 22 asbestos dust is toxic?</p> <p>13:48:22 23 MR. MURPHY: Objection to the form of</p> <p>13:48:22 24 the question.</p> <p>13:48:30 25 THE WITNESS: I don't recall -- I</p>	<p>13:50:04 1 A Yes, sir.</p> <p>13:50:04 2 Q Was that the company's position that</p> <p>13:50:04 3 you're stating here?</p> <p>13:50:08 4 A No. I'm stating that this was the feeling</p> <p>13:50:12 5 of Dr. Little, and we were relying on the judg</p> <p>13:50:18 6 of Dr. Little rather than coming to conclusio</p> <p>13:50:24 7 our own, because Dr. Little was much more</p> <p>13:50:28 8 more knowledgeable about that sort of thing t</p> <p>9 were.</p> <p>13:50:32 10 Q Then the last sentence, "It is probable,</p> <p>13:50:34 11 therefore, that in the next two or three years v</p> <p>13:50:38 12 may schedule a follow-up blanket survey so</p> <p>13:50:46 13 can be compared." Do you see that?</p> <p>13:50:46 14 A Yes, sir.</p> <p>13:50:48 15 Q Did you know as of '61 that it was goi</p> <p>13:50:48 16 to be yet two or three more years before anot</p> <p>13:50:50 17 of x-rays was taken?</p> <p>13:50:50 18 A I state that in that letter.</p> <p>13:50:54 19 Q So had there been some kind of decisio</p> <p>13:50:56 20 that point by management not to do one for t</p> <p>13:50:58 21 three more years?</p> <p>13:51:00 22 MR. GRAHAM: I object to the form c</p> <p>13:51:04 23 the question in that it requires a misstatemen</p> <p>13:51:06 24 what the letter itself says in stating that it is</p> <p>13:51:08 25 probable.</p>
Page 150	P
<p>13:48:30 1 don't recall that employees would have been told</p> <p>13:48:36 2 they should wear respirators for that reason.</p> <p>13:48:38 3 BY MR. HEBERLING:</p> <p>13:48:40 4 Q And was that true in the early '70s as</p> <p>5 well?</p> <p>13:48:42 6 A Probably.</p> <p>13:48:46 7 Q Up to the time of the smoking ban in '79?</p> <p>13:48:50 8 MR. MURPHY: Object to the form of</p> <p>13:48:50 9 the question.</p> <p>13:48:52 10 THE WITNESS: Probably, but there are</p> <p>13:48:54 11 some things that shouldn't be a need to be explain.</p> <p>13:48:58 12 You shouldn't have to tell an employee that they</p> <p>13:49:02 13 shouldn't put their fingers to a piece of red hot</p> <p>13:49:06 14 iron either, and we never told them that.</p> <p>13:49:08 15 BY MR. HEBERLING:</p> <p>13:49:18 16 Q Okay. Back to Exhibit 33. Let's see.</p> <p>13:49:34 17 I'll eliminate a few questions here. You talk</p> <p>13:49:36 18 about, in the middle of the page, on the x-ray</p> <p>13:49:42 19 follow-up -- In the middle of the page, it says, "At</p> <p>13:49:48 20 that time it was the feeling of the radiologist that</p> <p>13:49:48 21 a minimum of two years should elapse before the</p> <p>13:50:00 22 follow-up should be made, and it would probably be</p> <p>13:50:02 23 better to wait a longer period where there would be</p> <p>13:50:02 24 more likelihood of some conclusions showing up." Do</p> <p>13:50:02 25 you see that?</p>	<p>13:51:10 1 Go ahead and answer it to the extent y</p> <p>13:51:12 2 can.</p> <p>13:51:12 3 BY MR. HEBERLING:</p> <p>13:51:14 4 Q Do you know of any decision as to wh</p> <p>13:51:16 5 have a follow-up exam?</p> <p>13:51:18 6 A Well, I don't -- I don't recall</p> <p>13:51:24 7 specifically how the decision was reached on</p> <p>13:51:28 8 but I state this in the letter, and that would h</p> <p>13:51:34 9 been the consensus of the management at Li</p> <p>13:51:34 10 that's what we would do.</p> <p>13:51:42 11 Q Okay. Let's refer to Exhibit 34, and c</p> <p>13:51:50 12 this appear to be a letter from Mr. Pratt to y</p> <p>13:51:58 13 dated August 11, 1961?</p> <p>13:52:02 14 A I -- Yes. Yes.</p> <p>13:52:04 15 Q Did you receive this at or about its da</p> <p>13:52:04 16 A Yes, sir.</p> <p>13:52:12 17 Q Okay. Then we'll move on to Exhibi</p> <p>13:52:14 18 and does this appear to be a report of the B</p> <p>13:52:18 19 Mines dated October 11, '61?</p> <p>13:52:18 20 A Yes, sir.</p> <p>13:52:22 21 Q Did you receive this in Libby in 1961</p> <p>13:52:22 22 A Yes, sir.</p> <p>13:52:26 23 Q Would that be at or about the date of</p> <p>13:52:28 24 report?</p> <p>13:52:28 25 A Yes, sir.</p>

EARL D. LOVICK (VOL. 1)

CondenseIt!™

HURLBERT VS. W.R. GRACE

Page 153

Page 155

13:52:38 1 Q Okay. Then on page two there's mention as
 13:52:42 2 "E.D. Lovick, personnel manager". Were you, in
 13:52:46 3 fact, administration manager, or what was your title
 13:52:48 4 then?
 13:52:50 5 MR. MURPHY: It's page one of the
 13:52:52 6 report, isn't it, not page two?
 13:52:54 7 MR. HEBERLING: Right.
 13:52:54 8 MR. MURPHY: I think he's not looking
 13:53:02 9 at the same page you're asking him about.
 13:53:02 10 THE WITNESS: Well, I think probably
 13:53:10 11 my official title in 1961 was assistant manager or
 13:53:14 12 assistant to the manager or something like that.
 13:53:18 13 BY MR. HEBERLING:
 13:53:20 14 Q Okay. Then on page two of the report, in
 13:53:24 15 the last paragraph, do you see where it says, "The
 13:53:26 16 mill operated (on) three, eight-hour shifts a day,
 13:53:30 17 five days a week"?
 13:53:30 18 A Yes, sir.
 13:53:32 19 Q Was that typical at the time?
 13:53:34 20 A Yes, sir.
 13:53:36 21 Q Was that typical for the 1950s?
 13:53:38 22 A Yes, sir.
 13:53:40 23 Q Was it typical for the 1960s?
 13:53:40 24 A Yes, sir.
 13:53:42 25 Q And then three lines from the bottom

Page 154

13:53:56 1 they're talking about numbers of workers. It says
 13:54:00 2 "Five on construction". Do you see that?
 13:54:00 3 A Yes, sir.
 13:54:04 4 Q Did they handle repairs and construction
 13:54:12 5 at the mine and mill?
 13:54:12 6 A Yes, sir.
 13:54:24 7 Q Go to Exhibit 36. This is a letter by Ben
 13:54:30 8 Wake to Mr. Keenan at the Occupational Health
 13:54:38 9 Research & Training Facility in Cincinnati dated
 13:54:44 10 March 13, 1962. Is that what it appears to be?
 13:54:44 11 A Yes.
 13:54:48 12 Q Did you receive this in Libby in 1962?
 13:54:50 13 A I don't recall that I did, no, sir.
 13:54:56 14 Q Do you think you've seen it before?
 13:54:58 15 A I don't recall having seen it before.
 13:55:04 16 Q When did you learn that the type of
 13:55:12 17 asbestos in the ore at Libby was tremolite asbestos?
 13:55:16 18 A I don't really know, but it would have
 13:55:22 19 been -- Well, I don't really know. It would have
 13:55:24 20 been probably in the late 1950s.
 13:55:42 21 Q Here we go. Then let's refer next to
 13:55:48 22 Exhibit 37, and does this appear to be a letter from
 13:55:52 23 Mr. Keenan of the Public Health Service to Ben Wake
 13:55:56 24 dated April 13, 1962?
 13:55:56 25 A Yes, sir.

13:56:02 1 Q And did you see this in Libby in April
 13:56:02 2 1962?
 13:56:06 3 A Not that I recall, no, sir.
 13:56:08 4 Q Do you recall a document from the State
 13:56:16 5 showing a sample that was 40 percent asbestos in
 13:56:16 6 airborne dust?
 13:56:22 7 A Well, I recall -- I recall a letter from
 13:56:26 8 the State on the 40 percent asbestos, and I don't
 13:56:28 9 remember specifically how it was defined, but, yes,
 13:56:30 10 I remember that.
 13:56:34 11 Q But you don't recall seeing this
 13:56:36 12 particular letter, which is Exhibit 37?
 13:56:36 13 A No, sir, I don't.
 13:56:48 14 Q Refer to Exhibit 38, and does this appear
 13:56:52 15 to be a letter of April 19, 1962 from John Anderson,
 13:56:56 16 M.D., of the Montana Board of Health to Mr. Bleich,
 13:56:58 17 manager, Zonolite?
 13:57:00 18 A Yes, sir, I do.
 13:57:04 19 Q And was this received in Libby in 1962?
 13:57:06 20 A Yes, sir, I believe so.
 13:57:12 21 Q And was that at or about the date of
 13:57:16 22 April 19th?
 13:57:16 23 A Yes, sir.
 13:57:22 24 Q And did you -- I'll ask it this way. In
 13:57:28 25 the fifth line do you see where it says, "We were

Page 156

13:57:32 1 instructed by the board at that time to invite from
 13:57:36 2 time to time certain of those who had not complied
 13:57:38 3 with previous recommendations to meet with the
 13:57:40 4 board"? Do you see that?
 13:57:40 5 A Yes, sir.
 13:57:44 6 Q Did you understand -- Was it your
 13:57:46 7 understanding that the Board of Health's position
 13:57:48 8 was that Zonolite had not complied with previous
 13:57:50 9 recommendations?
 13:57:54 10 A Apparently, that's what this infers, yes,
 13:57:56 11 sir.
 13:57:56 12 Q And did you understand that the company
 13:57:58 13 was invited to explain itself at the next Board of
 13:58:00 14 Health meeting?
 13:58:02 15 A Yes, sir. I was aware of that.
 13:58:02 16 Q Did you do so?
 13:58:08 17 A Mr. Bleich met with them. I did not.
 13:58:22 18 Q Do you want to take a break at this point?
 13:58:22 19 A No.
 13:58:32 20 Q Okay. Let me know if you do.
 13:58:36 21 Let's refer to Exhibit 39, and does this
 13:58:44 22 appear to be an April 19, 1962 report of an
 13:58:50 23 industrial hygiene study by the Montana State Board
 13:58:52 24 of Health?
 13:58:52 25 A Yes, sir.

HURLBERT VS. W.R. GRACE**Condensed!!****EARL D. LOVICK (VOL. 1)**

Page 157

13:58:54 1 Q Was this received in Libby in 1962?
 13:58:54 2 A Yes, sir.
 13:58:56 3 Q Was that at or about the date of the
 13:58:56 4 report?
 13:58:56 5 A Yes.
 13:59:18 6 Q Okay. Then on the first page, third
 13:59:22 7 paragraph up from the bottom, do you see where it
 13:59:24 8 says, "During the time of this study, all of the
 13:59:26 9 plant was in operation such that the dust samples
 13:59:28 10 and other samples indicated should represent normal
 13:59:30 11 working conditions"? Do you see that?
 13:59:30 12 A Yes, sir.
 13:59:36 13 Q To your knowledge did the company dispute
 13:59:40 14 that or any other statement in this report?
 13:59:42 15 A No, sir. Not to my knowledge.
 13:59:48 16 Q Have you testified that you always had
 13:59:52 17 notice when Ben Wake would come or the Board of
 13:59:54 18 Health would come to inspect?
 13:59:56 19 A I don't believe I ever testified to that.
 14:00:04 20 I don't believe that -- When the Bureau of Mines
 14:00:08 21 came, we never received notice. It was their
 14:00:10 22 policy. And I really don't remember whether we had
 14:00:14 23 notice from Ben Wake that he was coming or not. I
 14:00:16 24 just don't recall what their procedure was.
 14:00:34 25 Q I'm now showing you your deposition of

Page 158

14:00:40 1 May 27, 1992, and at page 274 we see the question,
 14:00:42 2 So if a witness said, We always had advance notice
 14:00:44 3 when Ben Wake would come or the Department of Health
 14:00:46 4 would come to inspect us, you could not refute that
 14:00:50 5 one way or the other?
 14:00:52 6 And the answer, Well, I'd say that's
 14:00:52 7 true.
 14:00:58 8 Do you see that?
 14:01:00 9 MR. GRAHAM: I'd object to -- While
 14:01:04 10 the witness is studying that, I would object to two
 14:01:06 11 things. One is the improper impeachment, and the
 14:01:10 12 second one is that the objections that were made to
 14:01:12 13 the question at that time have not been referred to
 14:01:20 14 and would be repeated at this time.
 14:01:20 15 BY MR. HEBERLING:
 14:01:22 16 Q So I read the question and the answer.
 14:01:24 17 Was that the testimony you gave at that time?
 14:01:26 18 A That's what I said at that time. Perhaps
 14:01:30 19 I remembered something then that I don't now, but I
 14:01:32 20 really don't remember what the procedure of the
 14:01:34 21 Board of Health was.
 14:01:48 22 Q Now, you mentioned when the Bureau of
 14:01:50 23 Mines came you didn't have advance notice; is that
 14:01:52 24 correct?
 14:01:52 25 A No, sir, we did not.

Page 159

14:01:54 1 Q Now, the Bureau of Mines did spot
 14:01:56 2 inspections; is that correct?
 14:01:56 3 A I don't know what that means.
 14:02:00 4 Q Okay. We'll look at some of the documents
 14:02:04 5 later.
 14:02:06 6 Now, Don Riley, construction supervisor,
 14:02:12 7 has testified that he always had notice ahead of
 14:02:14 8 time, and there was an effort to clean up ahead of
 14:02:18 9 time before an inspection. Do you dispute that?
 14:02:18 10 A Yes, sir, I do.
 14:02:50 11 Q Page two. Let's look at page two of
 14:03:10 12 Exhibit 39, which is the 1962 report, and at the
 14:03:16 13 bottom do you see "Maximum Allowable Concentration,
 14:03:16 14 five"?
 14:03:16 15 A Yes, sir.
 14:03:22 16 Q And that would be million particles per
 14:03:22 17 cubic foot?
 14:03:24 18 A Yes.
 14:03:28 19 Q And then is it fair so say that out of the
 14:03:30 20 first 16 samples from the dry mill 15 of them
 14:03:32 21 violated that standard?
 14:03:34 22 MR. MURPHY: Would you read that
 14:03:36 23 back, please?
 24 (The reporter then read back the
 25 preceding question.)

Page 160

14:03:48 1 THE WITNESS: Well, according to this
 14:03:52 2 report, this file, that's what it states. However,
 14:03:56 3 I would like to point out that this states the
 14:04:00 4 asbestos concentrates are calculated. They are not
 14:04:08 5 measured, and they're calculated by taking the
 14:04:10 6 40 percent of the total of the million particles per
 14:04:12 7 cubic foot of dust that was in the air, and I think
 14:04:16 8 that that 40 percent is subject to question.
 14:04:20 9 BY MR. HEBERLING:
 14:04:20 10 Q Isn't it true that the standard would be
 14:04:24 11 violated even if 20 percent asbestos was used?
 14:04:26 12 A In some cases, yes.
 14:04:40 13 Q Were you aware that as of 1962 the
 14:04:46 14 standard in the literature was five for asbestos?
 14:04:46 15 MR. MURPHY: Objection to the form of
 14:04:48 16 the question.
 14:04:50 17 THE WITNESS: Yes, I was aware of
 14:04:50 18 that.
 14:04:56 19 BY MR. HEBERLING:
 14:05:00 20 Q Okay. Then page three, the first
 14:05:04 21 sentence, it says, "A review of Table I indicates
 14:05:08 22 concentrations of dust in the dry mill as being
 14:05:12 23 extremely high and substantially over the maximum
 14:05:16 24 allowable concentration for either an asbestos dust,
 14:05:24 25 mica dust and even, in most cases, a nuisance

EARL D. LOVICK (VOL. 1)

CondensIt!™

HURLBERT VS. W.R. GRACE

Page 161

Page 163

14:05:34 1 dust." Did the company dispute that?
 14:05:34 2 A Not to my knowledge, no, sir.
 14:05:36 3 Q Did that statement alarm you back then?
 14:05:39 4 A Probably, yes.
 14:05:34 5 Q Did Mr. Bleich give you any directive
 14:05:36 6 after he received the report?
 14:05:38 7 A Not that I recall, no, sir.
 14:05:52 8 Q And on the cover page for the report, do
 14:05:52 9 you see the usual statement of confidentiality?
 14:05:52 10 A Yes, sir.
 14:05:52 11 Q And was this report kept so my management?
 14:05:54 12 A I would assume so, yes.
 14:05:56 13 Q Was it disseminated to the employees?
 14:05:56 14 A No, sir.
 14:06:00 15 Q Up to this point had there been any notice
 14:06:02 16 to the employees regarding the serious hazards of
 14:06:14 17 asbestos exposure?
 14:06:16 18 A Not that I recall, no, sir.
 14:06:28 19 Q Did you refer this report or its subject
 14:06:28 20 matter to the safety committee after you received
 14:06:28 21 it?
 14:06:56 22 A Not to my knowledge, no, sir.
 14:06:56 23 Q Did Mr. Bleich die in 1968?
 14:07:02 24 A Yes, sir.
 14:07:04 25 Q And that's when you took over as general

Page 162

14:07:04 1 manager?
 14:07:04 2 A Yes, sir.
 14:07:04 3 Q Did he die of lung problems?
 14:07:10 4 A Yes, sir.
 14:07:10 5 Q As of '62, was it fair to say that
 14:07:12 6 Mr. Bleich was in denial over the asbestos problem?
 14:07:12 7 MR. GRAHAM: Objection to the form of
 14:07:12 8 the question.
 14:07:12 9 MR. MURPHY: Objection to the form of
 14:07:14 10 the question. Lack of foundation.
 14:07:14 11 THE WITNESS: I don't know what the
 14:07:14 12 question means.
 14:07:14 13 BY MR. HEBERLING:
 14:07:16 14 Q You were with Mr. Bleich a lot as
 14:07:16 15 assistant manager --
 14:07:16 16 A Yes, sir.
 14:07:16 17 Q -- and general manager? What was his
 14:07:18 18 attitude toward the dust -- the asbestos problem in
 14:07:18 19 the early '60s?
 14:07:18 20 A Well, I think he was concerned about it,
 14:07:20 21 like all of us were.
 14:07:20 22 Q Did he recognize that it was significant?
 14:07:20 23 A Certainly.
 14:07:22 24 MR. GRAHAM: Same objection.
 14:07:22 25 /////

1 BY MR. HEBERLING:

14:07:22 2 Q Did you push for any improvements at the
 14:07:24 3 plant or the areas where storage of the ore was
 14:07:24 4 done --
 14:07:24 5 MR. MURPHY: Object to the --
 14:07:24 6 BY MR. HEBERLING:
 14:07:26 7 Q -- that he put a hold on?
 14:07:30 8 MR. MURPHY: Read that back, please.
 14:07:30 9 (The reporter then read back the
 14:07:30 10 preceding question.)
 14:07:40 11 MR. MURPHY: Object to the form of
 14:07:40 12 the question.
 14:07:46 13 THE WITNESS: Well, no, sir, but I'd
 14:07:50 14 like to clarify something about pushing for
 14:07:54 15 improvements because of this. We were all concerned
 14:08:04 16 about the high dust incidence and wanted to improve
 14:08:08 17 it, but in large part no one knew how to do this.
 14:08:16 18 So we did what we could, but there was a big lack in
 14:08:18 19 technology and the knowledge as to how we could
 14:08:20 20 accomplish what was desired.
 14:08:22 21 BY MR. HEBERLING:
 14:08:24 22 Q Did you make some inquiries to determine
 14:08:28 23 that no one knew how to approach this?
 14:08:34 24 A Well, certainly it was discussed with many
 14:08:36 25 people as to what could be done, and so in that

Page 164

14:08:42 1 sense, yes, we would have been making inquiries.
 14:08:46 2 Q I believe you've testified that, through
 14:08:50 3 the '60s and maybe -- If I'm wrong, please tell me,
 14:08:56 4 but I believe you've testified that no industrial
 14:08:56 5 hygiene engineer was consulted. Is that correct?
 14:08:58 6 A Yes, sir.
 14:09:06 7 Q As far as maintenance is concerned,
 14:09:08 8 wouldn't it have been feasible to simply add more
 14:09:10 9 men on to maintenance?
 14:09:12 10 A Yes, and I think that that was done in
 14:09:14 11 large part.
 14:09:16 12 Q And since the dry mill was down at least
 14:09:20 13 one day a week, was it feasible to do some
 14:09:22 14 maintenance or cleanup on those days?
 14:09:26 15 A There was that work done on those days.
 14:09:28 16 Q Was it feasible to do more than what was
 14:09:30 17 done?
 14:09:32 18 MR. MURPHY: Objection to the form of
 14:09:32 19 the question.
 14:09:36 20 THE WITNESS: Well, I can't answer
 14:09:38 21 that question. You can always say it's possible to
 14:09:44 22 have done more for whatever circumstance.
 14:09:44 23 BY MR. HEBERLING:
 14:09:50 24 Q Did you know -- In 1965 the bigger fan was
 14:09:52 25 bought; correct?

HUKLEBEK VS. W.R. GRACE

CondenseIt!™

EARL D. LOVICK (VOL. 1)

Page 165	Page 167
<p>14:09:52 1 A Uh-huh.</p> <p>14:09:56 2 Q Now, as of 1962, wasn't it feasible to get</p> <p>14:10:00 3 more fans, more ventilating capacity to get the dust</p> <p>14:10:02 4 out of the dry mill?</p> <p>14:10:06 5 A Possibly, yes, it could have been.</p> <p>14:10:20 6 Q Do you recall disagreeing with Mr. Bleich</p> <p>14:10:30 7 on the approach to dust control?</p> <p>14:10:40 8 A No, sir.</p> <p>14:10:46 9 Q Let's refer to page four of the 1962</p> <p>14:10:56 10 report from the Board of Health. At the top it</p> <p>14:11:00 11 states, "At the time of this study, there was no</p> <p>14:11:02 12 attempt made to determine each of the locations</p> <p>14:11:06 13 which were contributing to dustiness in the</p> <p>14:11:10 14 building, as was done in the past study of 1958,</p> <p>14:11:10 15 since, on the observation, it was clear that all of</p> <p>14:11:16 16 the locations enumerated during the 1958 study were</p> <p>14:11:18 17 still in existence and, perhaps, even others were</p> <p>14:11:22 18 added to this group." Do you see that?</p> <p>14:11:22 19 A Yes, sir.</p> <p>14:11:24 20 Q Did the company dispute that statement?</p> <p>14:11:24 21 A No, sir.</p> <p>14:11:26 22 Q And then under "Conclusions," the first</p> <p>14:11:30 23 sentence, do you see where it says, "As indicated in</p> <p>14:11:32 24 the findings of this study, it appeared that no</p> <p>14:11:36 25 progress had been made in reducing dust</p>	<p>14:12:46 1 appear to be a letter from Ben Wake to Mr. Bleich,</p> <p>14:12:52 2 manager of Zonolite, dated May 21, 1962?</p> <p>14:12:52 3 A Yes, sir.</p> <p>14:12:56 4 Q And was this received at Zonolite in May</p> <p>14:12:56 5 of 1962?</p> <p>14:12:56 6 A Yes, sir.</p> <p>14:13:10 7 Q Let's refer to Exhibit 41. Does this</p> <p>14:13:14 8 appear to be a memo from you to Mr. Kelley dated</p> <p>14:13:16 9 September 25, 1962?</p> <p>14:13:24 10 A Yes, sir.</p> <p>14:13:28 11 Q Are you the author of this memo?</p> <p>14:13:28 12 A Yes, sir.</p> <p>14:13:34 13 Q At the top, first sentence, it says,</p> <p>14:13:38 14 "John, Dan and I have gone through the proposed</p> <p>14:13:42 15 asbestos circuit trying to get an estimate of</p> <p>14:13:44 16 capital expenditures required as well as operating</p> <p>14:13:46 17 costs for mills of various capacities." Do you see</p> <p>14:13:46 18 that?</p> <p>14:13:48 19 A Yes, sir.</p> <p>14:13:50 20 Q What was the proposed asbestos circuit?</p> <p>14:14:00 21 A Well, at that time we were investigating</p> <p>14:14:08 22 the possibility of adding an asbestos circuit or</p> <p>14:14:12 23 building an asbestos mill for the purpose of</p> <p>14:14:16 24 concentrating asbestos which could be used as a</p> <p>14:14:20 25 commercial product and sold as asbestos.</p>
Page 166	Page 168
<p>14:11:38 1 concentrations in the dry mill to an acceptable</p> <p>14:11:42 2 level and that, indeed, the dust concentrations had</p> <p>14:11:44 3 been increased substantially over those in the</p> <p>14:11:46 4 past"? Do you see that?</p> <p>14:11:46 5 A Yes, sir.</p> <p>14:11:48 6 Q And did the company dispute that</p> <p>14:11:48 7 statement?</p> <p>14:11:48 8 A No, sir.</p> <p>14:11:58 9 Q Then the next page is a cover letter for</p> <p>14:12:06 10 the report. Do you see that? It's a letter from</p> <p>14:12:10 11 Ben Wake to Mr. Bleich, manager, Zonolite?</p> <p>14:12:12 12 A Yes, sir.</p> <p>14:12:14 13 Q Was that received at Zonolite in Libby in</p> <p>14:12:14 14 1962?</p> <p>14:12:16 15 A Yes, sir.</p> <p>14:12:20 16 Q And it says in the middle paragraph, "We</p> <p>14:12:22 17 appreciate your interest and cooperation in the</p> <p>14:12:26 18 performance of the study but are disappointed with</p> <p>14:12:32 19 the lack of progress made in dust control." Do you</p> <p>14:12:34 20 see that?</p> <p>14:12:34 21 A Yes, sir.</p> <p>14:12:34 22 Q And do you recall discussing this with</p> <p>14:12:34 23 Mr. Wake at the time?</p> <p>14:12:34 24 A No, sir, I don't recall.</p> <p>14:12:42 25 Q Then let's go to Exhibit 40. Does this</p>	<p>14:14:26 1 Q Back then was Zonolite adding asbestos to</p> <p>14:14:36 2 its final product, the products you described, the</p> <p>14:14:40 3 cement and the fireproofing products?</p> <p>14:14:42 4 A Not in Libby.</p> <p>14:14:44 5 Q Was that done elsewhere?</p> <p>14:14:44 6 A Yes, sir.</p> <p>14:14:52 7 Q And so was it the purpose to have an</p> <p>14:14:56 8 asbestos circuit to produce pure asbestos?</p> <p>14:15:02 9 A Yes, sir. That was the object. We were</p> <p>14:15:06 10 purchasing asbestos, and we wanted to determine two</p> <p>14:15:10 11 things: No. 1, whether we could recover asbestos</p> <p>14:15:14 12 from the Libby deposit, which would be a form of</p> <p>14:15:18 13 asbestos which would be a marketable, usable</p> <p>14:15:24 14 product, which we could use in our own plants and</p> <p>14:15:26 15 possibly have for sale to others.</p> <p>14:15:30 16 Q Then in the middle paragraph of that</p> <p>14:15:36 17 letter, do you see, "Estimated capital investment</p> <p>14:15:40 18 for this size mill, (680,000) for production of two</p> <p>14:15:42 19 or three tons per hour"?</p> <p>14:15:46 20 A This copy I have is very difficult to</p> <p>14:15:50 21 read, and I don't see that. What paragraph number</p> <p>14:15:52 22 is it in?</p> <p>14:15:58 23 Q The third one.</p> <p>14:16:00 24 A Oh, I see it. I see.</p> <p>14:16:08 25 Q So that would be \$680,000 for a mill with</p>

EARL D. LOVICK (VOL. 1)

CondenseIt!™

HURLBERT VS. W.R. GRACE

Page 169	Page 171
<p>14:16:10 1 an asbestos circuit in it?</p> <p>14:16:18 2 A Well, the mill would be an asbestos mill.</p> <p>14:16:20 3 Q It would be a separate building?</p> <p>14:16:20 4 A Yes, sir.</p> <p>14:16:22 5 Q And where was that going to be placed?</p> <p>14:16:24 6 A We didn't know. We never did determine</p> <p>14:16:26 7 that. It couldn't really be established until we</p> <p>14:16:34 8 had -- until we had the circuitry worked out and the</p> <p>14:16:36 9 flow sheet developed to know how much space it would</p> <p>14:16:38 10 take and where would be a practical place to have</p> <p>14:16:38 11 it.</p> <p>14:16:42 12 Q Then at page two of this same memo, second</p> <p>14:16:44 13 line, it says "From work done so far in the</p> <p>14:16:46 14 laboratory". Do you see that?</p> <p>14:16:50 15 A No, I don't.</p> <p>14:16:52 16 Q It's the second line of page two of the</p> <p>14:16:54 17 memo.</p> <p>14:16:54 18 A Okay.</p> <p>14:16:58 19 Q "From work done so far in the laboratory".</p> <p>14:16:58 20 A Okay.</p> <p>14:17:02 21 Q What I want to ask is, is this the</p> <p>14:17:04 22 experimental lab down by the railroad tracks by the</p> <p>14:17:04 23 edge of town?</p> <p>14:17:06 24 A No.</p> <p>14:17:08 25 Q Which laboratory was being used?</p>	<p>14:18:36 1 A The building is still there.</p> <p>14:18:40 2 Q Is David Robinson still alive?</p> <p>14:18:40 3 A Yes.</p> <p>14:18:42 4 Q Do you know where he lives?</p> <p>14:18:44 5 A Great Falls. No. He lives in Lakeside,</p> <p>14:18:44 6 Montana.</p> <p>14:18:46 7 Q Is he David W. Robinson?</p> <p>14:18:46 8 A Yes, sir.</p> <p>14:19:02 9 Q Okay. Let's refer to Exhibit 42. Does</p> <p>14:19:04 10 this appear to be a memo, Lovick to Kelley, dated</p> <p>14:19:06 11 October 9, 1962?</p> <p>14:19:08 12 A Yes, sir.</p> <p>14:19:08 13 Q Are you the author of this?</p> <p>14:19:10 14 A Yes, sir.</p> <p>14:19:12 15 Q The first line says, "The asbestos pilot</p> <p>14:19:16 16 plant was in partial operation last week." Do you</p> <p>14:19:16 17 see that?</p> <p>14:19:16 18 A Yes.</p> <p>14:19:18 19 Q Was that a pilot project for the asbestos</p> <p>14:19:20 20 circuit that you've described?</p> <p>14:19:20 21 A Yes, sir.</p> <p>14:19:22 22 Q Where was that located?</p> <p>14:19:26 23 A It was located up near the mill -- next to</p> <p>14:19:32 24 the mill, actually, in one of the mill buildings.</p> <p>14:19:36 25 Q Okay. Then let's refer to Exhibit 43.</p>
Page 170	Page 172
<p>14:17:12 1 A A laboratory up in the mill area next to</p> <p>14:17:12 2 the mill.</p> <p>14:17:20 3 Q Was there also work done in the, I think</p> <p>14:17:22 4 it was called -- the experimental laboratory down by</p> <p>14:17:26 5 the railroad tracks by the edge of town?</p> <p>14:17:36 6 A Not on this -- Not on this there wouldn't</p> <p>14:17:46 7 have been.</p> <p>14:17:46 8 Q Okay. Now, Les Skramstad will testify</p> <p>14:17:48 9 that he worked on some kind of pure asbestos project</p> <p>14:17:50 10 in the years '59 to '61 in the experimental lab down</p> <p>14:17:50 11 by the railroad tracks by the edge of town. What</p> <p>14:17:52 12 could that have been?</p> <p>14:17:56 13 A I don't know what that would have been.</p> <p>14:17:58 14 Q Did David Robinson have a role in the</p> <p>14:18:02 15 asbestos project that's being discussed in these</p> <p>14:18:02 16 memos?</p> <p>14:18:06 17 A No, sir, he did not. There was a David</p> <p>14:18:10 18 Robinson, but his function was the development of</p> <p>14:18:14 19 expanding furnaces, which work was done in the area</p> <p>14:18:16 20 that you're talking about.</p> <p>14:18:26 21 Q Okay. And the area that I'm talking</p> <p>14:18:28 22 about, is that now a woodworking company, Montana</p> <p>14:18:32 23 Woodwork Company or something like that?</p> <p>14:18:32 24 A Yes. Yes.</p> <p>14:18:34 25 Q And so the building is still there?</p>	<p>14:19:40 1 Does this appear to be a memo, Lovick to Kelley,</p> <p>14:19:42 2 dated December 10, 1962?</p> <p>14:19:42 3 A Yes, sir.</p> <p>14:19:46 4 Q Are you the author of this?</p> <p>14:19:46 5 A Yes, sir.</p> <p>14:19:52 6 Q Okay. The second paragraph says, "In</p> <p>14:19:54 7 March of this year, it was decided that Libby would</p> <p>14:19:56 8 go ahead and develop a process for concentrating</p> <p>14:20:00 9 asbestos." Do you see that?</p> <p>14:20:00 10 A Yes, sir.</p> <p>14:20:10 11 Q And was this the same project as the</p> <p>14:20:12 12 asbestos circuit?</p> <p>14:20:12 13 A Yes, sir.</p> <p>14:20:22 14 Q And then in this memo are you reporting to</p> <p>14:20:24 15 Mr. Kelley in Chicago as to the progress of this</p> <p>14:20:24 16 project?</p> <p>14:20:24 17 A Yes, sir.</p> <p>14:20:36 18 Q Then the last paragraph, the last half of</p> <p>14:20:38 19 the last paragraph on the first page here says,</p> <p>14:20:42 20 "Considering the asbestos faces which averaged</p> <p>14:20:44 21 32 percent". Do you see that?</p> <p>14:20:44 22 A Yes, sir.</p> <p>14:20:46 23 Q What does that mean, "Asbestos faces which</p> <p>14:20:48 24 averaged 32 percent"?</p> <p>14:20:50 25 A Well, the asbestos which was in these</p>

HURLBERT VS. W.R. GRACE**CondenseIt!™****EARL D. LOVICK (VOL. 1)**

Page 173

14:20:54 1 faces, in these dikes, averaged 32 percent asbestos.
 14:20:56 2 Q And what are dikes?
 14:20:58 3 A A wide vein.
 14:21:04 4 Q And then you say "A recovery figure of
 14:21:12 5 33 1/3 percent, production to be 5,000 tons per
 14:21:16 6 year," and that would be 5,000 tons of asbestos?
 14:21:18 7 A Yes, sir.
 14:21:24 8 Q And on page two of that memo, the second
 14:21:26 9 paragraph, it says, "Our laboratory studies were
 14:21:30 10 directed toward a program for selective flotation on
 14:21:34 11 the tremolite from the feed. The first efforts were
 14:21:38 12 to float the asbestos." Do you see that?
 14:21:38 13 A Yes, sir.
 14:21:40 14 Q Were you eventually successful in floating
 14:21:42 15 the asbestos?
 14:21:42 16 A Yes, sir.
 14:21:50 17 Q And was that so that tremolite could be
 14:21:54 18 used in lieu of other forms of asbestos in building
 14:21:56 19 materials?
 14:21:56 20 A Yes, sir.
 14:22:04 21 Q And on page four of the memo, last
 14:22:08 22 paragraph, it says, "We have been in contact with
 14:22:10 23 several engineering firms." Do you see that?
 14:22:12 24 A Yes.
 14:22:16 25 Q Is it fair to say that Zonolite sought

Page 174

14:22:18 1 outside help when it needed it?
 14:22:18 2 A Yes, sir.
 14:22:22 3 Q Then paragraph -- No. The next exhibit is
 14:22:28 4 44. If you'd refer to that. Does that appear to be
 14:22:36 5 a memo from Kelley to Lovick dated February 7, 1963,
 14:22:40 6 and did you -- Does it appear to be what I said it
 14:22:40 7 is?
 14:22:40 8 A Yes, sir.
 14:22:44 9 Q And did you receive that on or about its
 14:22:46 10 date?
 14:22:46 11 A Yes, sir.
 14:22:50 12 Q Now, in the last paragraph do you see
 14:22:58 13 where Kelley says, "Let us get a little more steam
 14:22:58 14 into this thing"? Do you see that?
 14:22:58 15 A Yes, sir.
 14:23:00 16 Q What was your understanding of what that
 14:23:00 17 meant?
 14:23:06 18 A Well, my understanding is what he says.
 14:23:18 19 He had the feeling that there was not the enthusiasm
 14:23:22 20 for getting this project going that there had been,
 14:23:24 21 and he wanted that enthusiasm renewed.
 14:23:28 22 Q Was there a Superior Asbestos Company
 14:23:28 23 formed?
 14:23:28 24 A Yes, sir.
 14:23:28 25 Q When was that?

Page 175

14:23:32 1 A About then, about 1960.
 14:23:34 2 Q '60 to '63, in there?
 14:23:36 3 A Somewhere in there, yes.
 14:23:40 4 Q And who was the owner of Superior Asbestos
 14:23:40 5 Company?
 14:23:40 6 A Zonolite Company.
 14:23:42 7 Q What was the purpose of that company?
 14:23:46 8 A It was an independent company, a
 14:23:50 9 subsidiary that was set up for the purpose of
 14:23:54 10 investigating this asbestos project.
 14:24:02 11 Q Okay. And you mentioned that the asbestos
 14:24:06 12 was not finally produced. Why was that?
 14:24:12 13 A Well, I need a definition of that
 14:24:16 14 question, please. When you say "Finally
 14:24:16 15 produced" --
 14:24:20 16 Q Did you ever go into production and sale
 14:24:20 17 of pure asbestos?
 14:24:24 18 A No, we did not. No, we did not.
 14:24:24 19 Q Why not?
 14:24:28 20 A Because it was felt there was not the
 14:24:32 21 market for the material, that we couldn't sell the
 14:24:36 22 material at a price which would be -- justify making
 14:24:38 23 the capital expenditure that was required.
 14:24:40 24 Q Okay. Then was it a factor that Libby was
 14:24:50 25 so far away from markets?

Page 176

14:24:54 1 A Well, that would probably be a factor.
 14:24:56 2 I'm not sure that that would have been the
 14:25:00 3 controlling factor. As I recall, it was felt that
 14:25:04 4 there just weren't the markets available anywhere to
 14:25:04 5 make it.
 14:25:06 6 Q Was it due in part --
 14:25:08 7 MR. MURPHY: Excuse me. Had you
 14:25:10 8 finished your answer, Mr. Lovick?
 14:25:12 9 THE WITNESS: I think so.
 14:25:12 10 BY MR. HEBERLING:
 14:25:16 11 Q Sorry. I don't mean to interrupt you.
 14:25:18 12 A No. That's fine.
 14:25:20 13 Q Was it due in part to the fact that
 14:25:24 14 tremolite asbestos fibers are shorter than other
 14:25:24 15 asbestos fibers?
 14:25:28 16 A Well, that's one of the reasons. The
 14:25:30 17 tremolite fibers are short, and there's not the
 14:25:34 18 market for short fiber asbestos that there is for
 14:25:40 19 longer fiber asbestos, such as chrysotile.
 14:25:44 20 Q Let's refer to Exhibit 45, and does that
 14:25:48 21 appear to be a letter from Ben Wake to Mr. Bleich,
 14:25:52 22 manager, Zonolite, dated May 23, 1963?
 14:25:54 23 A Yes, sir.
 14:25:58 24 Q Was this received in Libby in May 1963?
 14:26:00 25 A I would assume so, yes.

EARL D. LOVICK (VOL. 1)

CondenseIt!™

HURLBERT VS. W.R. GRACE

Page 177

Page 179

14:26:00 1 Q Is it probable?
 14:26:02 2 A Yes.
 14:26:12 3 Q And as part of the exhibit, there's
 14:26:14 4 attached a report of an industrial hygiene study by
 14:26:18 5 the Montana State Board of Health dated April 11,
 14:26:20 6 1963. Do you see that?
 14:26:20 7 A Yes, sir.
 14:26:24 8 Q And, again, on the face of the report, it
 14:26:26 9 states "Confidential". Do you see that?
 14:26:26 10 A Yes, sir.
 14:26:30 11 Q And was this report kept within
 14:26:32 12 management?
 14:26:34 13 A Yes, sir. To the best of my --
 14:26:38 14 Q Was it disseminated to the employees?
 14:26:38 15 A No, sir.
 14:26:40 16 Q And up to this point had there been any
 14:26:44 17 notice to the employees that asbestos in the dust
 14:26:46 18 was a hazardous substance?
 14:26:50 19 A Not that I recall, no, sir.
 14:27:10 20 Q Then at page two, under "Description of
 14:27:16 21 Operations" -- Probably the next page.
 14:27:16 22 A Yes, sir.
 14:27:22 23 Q In the middle of that paragraph, do you
 14:27:24 24 see where it says, "In general, there appeared to be
 14:27:28 25 little, if any, improvement at any point in the

1 BY MR. HEBERLING:
 14:28:38 2 Q Then continuing on that page, is there a
 14:28:42 3 listing of first floor, fourth floor, third floor
 14:28:44 4 and so forth?
 14:28:44 5 A Yes, sir.
 14:28:46 6 Q And are these many of the same problems
 14:28:52 7 that were discussed before, in 1956, '58, '62?
 14:28:52 8 A Yes, sir.
 14:29:00 9 Q And does this include the backs being off
 14:29:02 10 some screens?
 14:29:04 11 A Yes, sir.
 14:29:08 12 Q And leaks here and there?
 14:29:10 13 MR. GRAHAM: I'd object to the form
 14:29:14 14 of the question because it's unclear as to whether
 14:29:18 15 you're referring to whether those things that you
 14:29:22 16 specifically mentioned are problems that occurred in
 14:29:26 17 precisely the same location formerly. I think the
 14:29:28 18 question is vague and ambiguous.
 14:29:30 19 MR. HEBERLING: Okay. I'll rephrase
 14:29:32 20 it.
 14:29:36 21 BY MR. HEBERLING:
 14:29:38 22 Q Do you see in the discussion of the second
 14:29:42 23 floor, "No. 34 screen still leaked badly"? Do you
 14:29:42 24 see that?
 14:29:42 25 A Yes, sir.

Page 178

Page 180

14:27:30 1 plant"? Do you see that?
 14:27:30 2 A Yes, sir.
 14:27:32 3 MR. GRAHAM: Could you read the rest
 14:27:34 4 of the sentence?
 14:27:34 5 MR. HEBERLING: Okay.
 14:27:38 6 BY MR. HEBERLING:
 14:27:38 7 Q "Except, perhaps, at the voll grinder".
 14:27:38 8 What is a voll grinder?
 14:27:42 9 A It should be roll, R-O-L-L. That "V" is a
 14:27:42 10 misprint.
 14:27:44 11 Q What is a roll grinder?
 14:27:50 12 A Well, it's a machine to grind ore, and
 14:27:54 13 there are two -- made up of two rolls, generally two
 14:28:00 14 rolls which revolve, and the ore falls in between
 14:28:04 15 them, and as it goes through those rolls which are
 14:28:06 16 revolving, it is crushed.
 14:28:08 17 Q And does that cause dust?
 14:28:10 18 A Yes, sir.
 14:28:16 19 Q Then on page --
 14:28:20 20 MR. GRAHAM: I would object. The
 14:28:24 21 full sentence hasn't finally been read, but I'd just
 14:28:28 22 make that objection. You don't have to read it if
 14:28:30 23 you don't want to, but I just want to point out that
 14:28:32 24 it hasn't been read.
 14:28:34 25 /////

14:29:44 1 Q "And there was no improvement in this area
 14:29:46 2 since last study"? Do you see that?
 14:29:46 3 A Yes, sir.
 14:29:50 4 Q And then on the first floor, it says,
 14:29:50 5 "Leaks from all pipes should be stopped and
 14:29:54 6 ventilation applied where dust cannot be controlled
 14:29:56 7 by stopping." Do you see that?
 14:29:56 8 A Yes, sir.
 14:30:08 9 Q Then on page three, after the discussion
 14:30:12 10 of the first floor where the specific problems were,
 14:30:16 11 do you see this paragraph which states, "The size
 14:30:18 12 distribution of the dust in the air as determined by
 14:30:22 13 the U.S. Public Health Service indicates an average
 14:30:26 14 size of about 3.44 microns. It should be noted that
 14:30:30 15 these small diameter particles can be deposited in
 14:30:32 16 the deep lung tissue and are more apt to be of
 14:30:36 17 physiological significance than those above
 14:30:40 18 10 microns. In any case, over 60 percent of the
 14:30:44 19 particles were five microns or less, and 75 percent
 14:30:48 20 were less than 10 microns, all indicating a serious
 14:30:52 21 dust concentration, particularly in view of the
 14:30:58 22 quantity of asbestos known to be in the mixture."
 14:31:00 23 Do you see that?
 14:31:00 24 A Yes, sir.
 14:31:00 25 MR. GRAHAM: Objection. Improper

Page 181

14:31:00 1 examination.
 14:31:00 2 BY MR. HEBERLING:
 14:31:06 3 Q Okay. Now, do you know what size
 14:31:12 4 particles were visible? Was that over five?
 14:31:14 5 A No, sir, I don't know.
 14:31:18 6 Q Was it your understanding that the State
 14:31:24 7 is telling you that 60 percent of the particles are
 14:31:26 8 not visible?
 14:31:30 9 A No, sir. I don't know. I don't know what
 14:31:36 10 they're trying to tell us.
 14:31:34 11 Q Did you understand that the smallest ones
 14:31:36 12 were not visible to the naked eye?
 14:31:38 13 A Yes, sir.
 14:31:40 14 Q But you didn't know what size that was?
 14:31:42 15 A That's correct. I don't know what size
 14:31:42 16 that is.
 14:31:50 17 Q Have you testified that you always knew
 14:31:52 18 that it was the smallest ones which are the most
 14:31:54 19 dangerous?
 14:32:00 20 A Well, I don't recall, but I think that
 14:32:10 21 that's not an accurate statement. The small
 14:32:16 22 particles are the most dangerous, but it would have
 14:32:18 23 to be defined as to how small is small, and I can't
 14:32:22 24 tell you what size that would be, and I don't think
 14:32:24 25 I would ever have been able to say.

Page 182

14:32:28 1 Q Was this 1963 report when you first
 14:32:34 2 learned that the small diameter particles are more
 14:32:38 3 apt to be dangerous, or did you know that before
 14:32:38 4 '63?
 14:32:44 5 A Oh, I'm sure I knew it before '63.
 14:32:54 6 Q Okay. Then do you see on page -- the same
 14:32:56 7 page a table with a series of samples taken with a
 14:33:00 8 maximum allowable concentration of five and all the
 14:33:06 9 samples exceeding that?
 14:33:06 10 A Yes, sir.
 14:33:08 11 Q So all eight samples were over the
 14:33:08 12 maximum?
 14:33:10 13 A Yes, sir.
 14:33:14 14 Q And did you understand that where it's
 14:33:18 15 over the maximum that's hazardous to a worker's
 14:33:20 16 health?
 14:33:20 17 A Yes, sir.
 14:33:24 18 Q Then, also, at the bottom of the table, it
 14:33:28 19 says there's calculations on the basis of 40 percent
 14:33:40 20 asbestos in the airborne dust. Do you see that?
 14:33:40 21 A Yes.
 14:33:42 22 Q Is this where you learned about the
 14:33:46 23 40 percent test or the 40 percent result that
 14:33:48 24 somebody got?
 14:33:50 25 MR. GRAHAM: I'd object on the basis

Page 181 - Page 184

14:33:50 1 of foundation to the question.
 14:33:52 2 Go ahead and answer.
 14:33:54 3 THE WITNESS: Well, one of the
 14:33:56 4 reports from the State board is where I heard t
 14:33:58 5 40 percent, and I don't know if this report is t
 14:34:00 6 first time I've heard of it or not.
 14:34:02 7 BY MR. HEBERLING:
 14:34:04 8 Q Okay. Then under "Conclusions and
 14:34:06 9 Recommendations," do you see, "As noted in:
 14:34:10 10 previous reports, considerable effort should be
 14:34:12 11 immediately to improve the dust control"? Do
 14:34:12 12 see that?
 14:34:14 13 A Yes, sir.
 14:34:18 14 Q And at the end do you see where it says,
 14:34:22 15 "Dust control measures will have been applied
 14:34:24 16 that the hazardous condition existing at this pla
 14:34:28 17 is eliminated"? Do you see that?
 14:34:28 18 A Yes, sir.
 14:34:32 19 Q Did you have any doubt in 1963 as to wh
 14:34:34 20 the State Board of Health was telling you?
 14:34:38 21 A I don't think so.
 14:34:40 22 THE VIDEOGRAPHER: Excuse me. We
 14:34:42 23 going to have to stop to change the tape.
 24 MR. HEBERLING: Okay.
 25 THE VIDEOGRAPHER: Going off the

Page

1
 2
 3
 4
 5
 6
 7
 8
 9
 10
 11
 12
 13
 14
 15
 16
 17
 18
 19
 20
 21
 22
 23
 24
 25

EARL D. LOVICK (VOL. 1)

CondenseIt!™

HURLBERT VS. W.R. GRACE

Page 184

Page 186

1 record at approximately 2:34.

2 MR. MURPHY: We've been going for an
3 hour and a half. Let's take a five-minute break, at
4 least, anyway.

5 (Brief recess.)

6 THE VIDEOGRAPHER: We're back on the
7 record at approximately 2:51.

14:51:34 8 BY MR. HEBERLING:

14:51:36 9 Q Was it about April 15, 1963 that the

14:51:40 10 Zonolite Company was merged into W.R. Grace?

14:51:40 11 A Yes, sir.

14:51:42 12 Q And was that a stock-for-stock
14:51:46 13 transaction?

14:51:46 14 A Yes, sir.

14:51:48 15 Q Did you own stock in Zonolite at the time?

14:51:48 16 A Yes, sir.

14:51:52 17 Q And after that, did you own stock in
14:51:52 18 Grace?

14:51:52 19 A Yes, sir.

14:51:52 20 Q Do you still?

14:51:54 21 A No, sir.

14:51:54 22 Q When did you sell?

14:51:58 23 A Within the last ten years.

14:52:06 24 Q And after April 15, 1963, did Mr. Bleich
14:52:08 25 continue as plant manager in Libby?

14:52:16 1 times a year?

14:53:18 2 A Well, he visited periodically. I don't

14:53:24 3 know what kind of a schedule he was on, but, yes, he
14:53:24 4 did.

14:53:28 5 Q Was it, generally, more than once a year?

14:53:28 6 A Yes.

14:53:30 7 Q And when he did visit, did he make a
14:53:32 8 safety inspection?

14:53:32 9 A Yes, sir.

14:53:36 10 Q Did you ever see any reports produced by
14:53:40 11 Mr. Kostic as to safety inspections on Zonolite?

14:53:46 12 A Well, I certainly saw reports of --

14:53:50 13 reporting on his visit. I don't know if you'd say
14:53:52 14 that they were results of his safety inspection, but
14:53:54 15 in a broad sense it would be.

14:53:56 16 Q Did you see reports that he prepared about
14:53:58 17 his visits?

14:53:58 18 A Yes, sir.

14:54:00 19 Q Do you know where these are now?

14:54:02 20 A No, sir.

14:54:06 21 Q Have you seen any in the last ten years in
14:54:06 22 these depositions?

14:54:08 23 A I don't recall.

14:54:12 24 Q And in the years both before 1963 and
14:54:22 25 after 1963, did you send all governmental inspection

Page 185

Page 187

14:52:08 1 A Yes.

14:52:12 2 Q And did Mr. Kelley continue as the person
14:52:14 3 to whom Mr. Bleich reported?

14:52:14 4 A Yes.

14:52:18 5 Q And did you continue in the same position
14:52:20 6 you'd been in?

14:52:20 7 A Yes, sir.

14:52:22 8 Q And that was assistant manager?

14:52:24 9 A Yes.

14:52:26 10 Q And did all other Libby employees continue
14:52:28 11 in their positions as well?

14:52:28 12 A Yes.

14:52:34 13 Q Now, while Mr. Kelley was president of
14:52:40 14 Zonolite approximately '55 to '63, was he kept
14:52:42 15 informed of what was happening in Libby?

14:52:44 16 A I think so, yes, sir.

14:52:48 17 Q And did he visit Libby a few times a year?

14:52:48 18 A Yes, sir.

14:52:52 19 Q And then after April 15, 1963, I believe
14:52:56 20 you testified that Mr. Kostic was safety supervisor?

14:52:56 21 A Yes, sir.

14:53:04 22 Q And after April of '63, was Mr. Kostic
14:53:06 23 kept informed of what was happening in Libby?

14:53:08 24 A Yes, sir.

14:53:16 25 Q And did Mr. Kostic visit two or three

14:54:26 1 reports to company headquarters?

14:54:26 2 A Yes, sir.

14:54:30 3 Q Was that a, Yes?

14:54:30 4 A Yes.

14:54:38 5 Q Okay. Let's refer to Exhibit 46, and does
14:54:42 6 that appear to be a letter by Ben Wake to

14:54:46 7 Mr. Bleich, manager, Zonolite, dated July 3, 1963?

14:54:48 8 A Yes.

14:54:52 9 Q And was this received in Libby in July
14:54:52 10 1963?

14:54:52 11 A Yes, sir.

14:54:58 12 Q And in the first paragraph it says --

14:55:02 13 There's an examination of six vermiculite samples.
14:55:02 14 Do you see that?

14:55:04 15 A Yes.

14:55:04 16 Q Was that the ore or the product?

14:55:08 17 A I don't know.

14:55:12 18 Q Well, the percentage tremolite came out to
14:55:18 19 be a range of six to 22 percent. Does that seem to
14:55:20 20 tell you that it's the ore?

14:55:24 21 A It would have to be the ore, yes.

14:55:32 22 Q Then please refer to Exhibit 47. Does

14:55:36 23 that appear to be a letter of Dr. Woodrow Nelson to
14:55:40 24 Zonolite's insurance company, Maryland Casualty,
14:55:44 25 dated February 14, 1964?

HURLBERT VS. W.R. GRACE**CondenseIt!™****EARL D. LOVICK (VC**

Page 188

14:53:44 1 A Yes, sir.
 14:53:44 2 Q And did you receive this in Libby in
 14:53:48 3 February 1964?
 14:53:54 4 A I don't recall when we would have received
 14:53:58 5 it.
 14:56:00 6 Q Is it likely that you received it at or
 14:56:02 7 about its date?
 14:56:02 8 A It's very possible, yes.
 14:56:04 9 Q Is it likely?
 14:56:08 10 MR. GRAHAM: Object.
 14:56:08 11 MR. HEBERLING: It's not foundationed
 14:56:10 12 unless he says it's probable or something.
 14:56:14 13 MR. GRAHAM: He can't foundation it
 14:56:16 14 unless he knows.
 15 15 MR. HEBERLING: Right.
 14:56:18 16 MR. GRAHAM: And he's testified he
 14:56:20 17 doesn't know when he received it.
 14:56:20 18 BY MR. HEBERLING:
 14:56:20 19 Q This is a document that you've seen a
 14:56:22 20 number of times?
 14:56:22 21 A Yes, it is.
 14:56:24 22 Q And is it probable that it was received in
 14:56:28 23 1964 at Zonolite in Libby?
 14:56:30 24 A Probably, yes.
 14:56:32 25 MR. GRAHAM: Object as to form.

Page 189

14:56:32 1 BY MR. HEBERLING:
 14:56:32 2 Q In paragraph one -- Now, this is regarding
 14:56:36 3 Eitel Ludwig, a worker at Zonolite?
 14:56:38 4 A Yes.
 14:56:40 5 Q Did you know Mr. Ludwig?
 14:56:40 6 A Yes, sir.
 14:56:40 7 Q And paragraph one talks about a shortness
 14:56:44 8 of breath on exertion. Did you observe that with
 14:56:48 9 Mr. Ludwig as well?
 14:56:50 10 MR. GRAHAM: Objection as to form.
 14:56:52 11 Time and place.
 14:56:52 12 THE WITNESS: I can't recall that I
 14:56:58 13 specifically did on Mr. Ludwig, no.
 14:56:58 14 BY MR. HEBERLING:
 14:57:00 15 Q Okay. And then in the second full
 14:57:06 16 paragraph, in the middle, it says, "A marked advance
 14:57:10 17 in fibrosis is obvious." Do you see that?
 14:57:12 18 A Yes.
 14:57:14 19 Q And then page two, there's a doctor's
 14:57:20 20 conclusion, "In my opinion his lung condition is due
 14:57:22 21 to (pneumoconiosis), almost certainly from the
 14:57:26 22 asbestos content of the dust." Do you see that?
 14:57:30 23 A Yes.
 14:57:30 24 Q And is it fair -- Was it your
 14:57:32 25 understanding that pneumoconiosis is a dust disease?

Page

14:57:38 1 A Well, it would be a lung disease. I don't
 14:57:42 2 know that I knew it was a dust disease specifi
 14:57:50 3 Q Did you discuss this doctor's conclusion
 14:57:54 4 with anyone after you received it, do you think
 14:58:02 5 A I don't recall.
 14:58:04 6 Q Was there any transfer of Mr. Ludwig f
 14:58:06 7 his position to a safer one after this letter was
 14:58:10 8 received?
 14:58:12 9 MR. GRAHAM: Objection as to the fo
 14:58:20 10 of the question because of the lack of knowlec
 14:58:22 11 to this witness as to precisely when the letter
 14:58:24 12 received.
 14:58:26 13 Go ahead and answer it to the extent you
 14:58:28 14 can.
 14:58:28 15 THE WITNESS: To my recollection
 14:58:34 16 there was no transfer of his duties, no, sir.
 14:58:36 17 BY MR. HEBERLING:
 14:58:36 18 Q Do you see where the doctor says at the
 14:58:42 19 first part of page two, "The treatment recomm
 14:58:44 20 at this time is that this man avoid as much as
 14:58:46 21 possible dust exposure"?
 14:58:48 22 A Yes, sir.
 14:58:48 23 Q Did Mr. Ludwig die of lung problems?
 14:58:58 24 A I don't recall what his cause of death w
 14:58:58 25 listed at, but Mr. Ludwig did die, yes, sir.

Pa

14:59:02 1 Q Do you know how long he worked after
 14:59:04 2 A No, sir. I don't remember.
 14:59:08 3 Q Let's refer to Exhibit 48, and does that
 14:59:10 4 appear to be a letter of one, Dr. Park, to Mr. I
 14:59:20 5 dated April 1, 1964?
 14:59:22 6 A Yes, sir.
 14:59:22 7 Q Did you receive a copy of this and then
 14:59:24 8 later respond to the questions in it?
 14:59:40 9 A I don't recall.
 14:59:44 10 Q Okay. We'll perhaps clear that up. Let
 14:59:50 11 refer to Exhibit 49. Does this appear to be a
 14:59:52 12 letter of Mr. Pratt of Western Mineral to
 15:00:00 13 Mr. Kelley, general manager, Zonolite?
 15:00:04 14 A Yes, sir.
 15:00:04 15 Q And is it dated April 2, 1964?
 15:00:08 16 A Yes.
 15:00:08 17 Q And was this received in Libby in Apri
 15:00:12 18 1964?
 15:00:14 19 A Yes, sir.
 15:00:14 20 Q Okay. And Mr. Pratt is the president o
 15:00:22 21 one of Zonolite's customers?
 15:00:24 22 A He was a vice-president.
 15:00:28 23 Q Okay. And would you agree that he is
 15:00:32 24 acting responsibly in inquiring about health h
 15:00:36 25 and asking follow-up questions?

EARL D. LOVICK (VOL. 1)

Condenset!™

HURLBERT VS. W.R. GRACE

Page 192	Page 194
<p>15:00:38 1 MR. GRAHAM: Object to the form of</p> <p>15:00:40 2 the question. Vague and ambiguous as to,</p> <p>15:00:42 3 Responsible.</p> <p>15:00:46 4 THE WITNESS: I would say, Yes.</p> <p>15:00:46 5 BY MR. HEBERLING:</p> <p>15:00:46 6 Q Okay. Then please refer to Exhibit 50,</p> <p>15:00:54 7 and does this appear to be a letter by you to</p> <p>15:00:56 8 Mr. Pratt dated April 9, 1964?</p> <p>15:01:02 9 A Yes, sir.</p> <p>15:01:02 10 Q Are you the author of this letter?</p> <p>15:01:06 11 A Yes, sir.</p> <p>15:01:08 12 Q And here do you answer the questions posed</p> <p>15:01:14 13 in the letter which is Exhibit 48, which we looked</p> <p>15:01:16 14 at earlier?</p> <p>15:01:18 15 A Yes.</p> <p>15:01:18 16 Q So is it likely, then, that you did</p> <p>15:01:24 17 receive a copy of the letter of April 1, 1964, which</p> <p>15:01:24 18 is Exhibit 48?</p> <p>15:01:26 19 A Yes, sir.</p> <p>15:01:44 20 Q Then Exhibit 51, does this appear to be a</p> <p>15:01:48 21 notice to employees signed by you?</p> <p>15:01:54 22 A Yes, sir.</p> <p>15:01:54 23 Q Are you the author of this notice?</p> <p>15:01:56 24 A Yes, sir.</p> <p>15:01:58 25 Q And does this relate to an x-ray survey</p>	<p>15:03:16 1 our employees from the town of Libby to the</p> <p>15:03:24 2 operation on a bus, and so we would assign the</p> <p>15:03:24 3 people on a particular shift riding in a particular</p> <p>15:03:30 4 bus that on Tuesday or whatever, at the termination</p> <p>15:03:34 5 of the shift, they were to go to the hospital at</p> <p>15:03:38 6 that time for their chest x-ray, and that would be</p> <p>15:03:40 7 scheduled in groups of about 20.</p> <p>15:03:42 8 Q Okay. And as far as any notice to the</p> <p>15:03:50 9 employees, was this notice, which is Exhibit 51, the</p> <p>15:03:54 10 extent of it?</p> <p>15:03:54 11 MR. MURPHY: Objection to the form of</p> <p>15:03:56 12 the question. Asked and answered.</p> <p>15:03:58 13 THE WITNESS: Well, it would be this</p> <p>15:04:00 14 notice plus the notice as to when they were to</p> <p>15:04:06 15 report, and a schedule was kept as to who showed up</p> <p>15:04:08 16 for their x-rays, and anybody that did not show up</p> <p>15:04:10 17 when they were scheduled, if they were off work or</p> <p>15:04:16 18 whatever reason, they were notified to report at a</p> <p>15:04:16 19 different time.</p> <p>15:04:18 20 BY MR. HEBERLING:</p> <p>15:04:18 21 Q To your knowledge was any reason given to</p> <p>15:04:22 22 the employees for the x-ray survey?</p> <p>15:04:30 23 A Well, just to evaluate their chest x-rays.</p> <p>15:04:34 24 Q As stated on this notice, which is</p> <p>15:04:40 25 Exhibit 51?</p>
Page 193	Page 195
<p>15:02:04 1 for 1964?</p> <p>15:02:04 2 A Yes, sir.</p> <p>15:02:08 3 Q Would this be posted, or was it sent out</p> <p>15:02:10 4 to each employee?</p> <p>15:02:12 5 A It would be posted -- would have been</p> <p>15:02:12 6 posted.</p> <p>15:02:14 7 Q Where would it have been posted?</p> <p>15:02:16 8 A On bulletin boards in the operation.</p> <p>15:02:18 9 Q And where were the bulletin boards back</p> <p>15:02:20 10 then?</p> <p>15:02:20 11 A Throughout the operation in various</p> <p>15:02:22 12 places, in all departments. Each department had a</p> <p>15:02:24 13 bulletin board.</p> <p>15:02:26 14 Q And how many departments were there, four</p> <p>15:02:30 15 or five?</p> <p>15:02:30 16 A More than that.</p> <p>15:02:40 17 Q So was there any other way that this --</p> <p>15:02:40 18 that the prospective survey of chest x-rays was</p> <p>15:02:46 19 noticed to the employees?</p> <p>15:02:56 20 A Yes. We made arrangements with the</p> <p>15:02:56 21 hospital to schedule so many people at a particular</p> <p>15:02:58 22 time and from each of the various departments, and</p> <p>15:03:04 23 the people in that department would be notified as</p> <p>15:03:08 24 to when they were to appear at the hospital. And it</p> <p>15:03:12 25 should be noted that we furnished transportation for</p>	<p>15:04:42 1 A Yes.</p> <p>15:04:42 2 Q And was this the same procedure you</p> <p>15:04:46 3 followed each year as far as how employees were</p> <p>15:04:50 4 notified of chest x-rays?</p> <p>15:04:54 5 A Yes, sir.</p> <p>15:04:54 6 Q To your knowledge did the company ever</p> <p>15:04:58 7 post a notice stating the reason for the chest</p> <p>15:05:00 8 x-rays in any more detail than is here?</p> <p>15:05:04 9 A No, sir.</p> <p>15:05:04 10 Q And that's true all the way up to '83,</p> <p>15:05:08 11 when you left?</p> <p>15:05:10 12 A Yes, sir.</p> <p>15:05:14 13 Q Let's refer to Exhibit 52. Does this</p> <p>15:05:20 14 appear to be a letter of Ben Wake to Bud Vinion at</p> <p>15:05:24 15 Zonolite dated May 8, 1964?</p> <p>15:05:30 16 A Yes, sir.</p> <p>15:05:32 17 Q Was this received at Zonolite in May 1964?</p> <p>15:05:34 18 A I'm sure it was, yes, sir.</p> <p>15:05:38 19 Q Then let's refer to Exhibit 53, and does</p> <p>15:05:40 20 this appear to be a letter of Ben Wake to</p> <p>15:05:44 21 Mr. Bleich, manager of Zonolite, dated May 11, 1964?</p> <p>15:05:50 22 A Yes, sir.</p> <p>15:05:52 23 Q Was this received at Zonolite in May of</p> <p>15:05:54 24 1964?</p> <p>15:05:56 25 A Yes, sir.</p>